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**FINAL**  
CITY COUNCIL  
CITY OF WICHITA  
KANSAS

City Council Meeting  
09:00 a.m. February 8, 2011

City Council Chambers  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on February 1, 2011

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**AWARDS AND PROCLAMATIONS**

Proclamations

Clare Vanderpool Day  
Teen Dating Violence Awareness & Prevention Month

**I. PUBLIC AGENDA**

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. James Pruden - Lighting issue at 757 South Chautauqua.
2. Robert Kimber - Street plowing by schools.

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**COUNCIL BUSINESS**

**II. UNFINISHED COUNCIL BUSINESS**

None

### **III. NEW COUNCIL BUSINESS**

1. Approval of Forgivable Loan Agreement, MoJack. (District I)

RECOMMENDED ACTION: Approve the incentive offer and approve the forgivable loan agreement for MoJack Distributors, LLC, place the Home Rule Ordinance on first reading and authorize the necessary signatures.

2. Approval of Forgivable Loan Agreement, Apex Engineering International. (District IV)

RECOMMENDED ACTION: Approve the forgivable loan agreement for Apex Engineering, place the home rule ordinance on first reading and authorize the necessary signatures.

3. Petition to approve a Community Improvement District for Eastgate Center Development. (District II)

RECOMMENDED ACTION: Accept the petition and adopt the resolution setting a public hearing on March 1, 2011 for consideration of the establishment of a Community Improvement District.

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### **COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES**

#### **PLANNING AGENDA**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

### **IV. NON-CONSENT PLANNING AGENDA**

1. CON2010-00008 – Request for a Conditional Use to allow a Wrecking/Salvage Yard on property located at the southwest corner of 29th Street North and Mead Street. (District VI)

RECOMMENDED ACTION: 1) Concur with the findings of the MAPC, approve the Conditional Use, subject to the recommended conditions and authorize the Mayor to sign the resolution (requires a three-fourths majority); OR 2) Deny the Conditional Use request by making alternative findings, and override the MAPC's recommendation (requires simple majority).

### **V. CONSENT PLANNING AGENDA**

1. \*VAC2010-00034 - Request to vacate a platted drainage and utility easement and a platted utility easement; generally located south of Kellogg/US 54, east of Woodlawn Boulevard. (District II)

RECOMMENDED ACTION: Follow the recommended action of the Metropolitan Area Planning Commission, to approve the Vacation Order and authorize the necessary signatures.



## **HOUSING AGENDA**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Summer Jackson, Housing Member is also seated with the City Council.**

### **VI. NON-CONSENT HOUSING AGENDA**

None

### **VII. CONSENT HOUSING AGENDA**

None

## **AIRPORT AGENDA**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

### **VIII. NON-CONSENT AIRPORT AGENDA**

None

### **IX. CONSENT AIRPORT AGENDA**

None

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## **COUNCIL AGENDA**

### **X. COUNCIL MEMBER AGENDA**

1. Approval of travel expenses for Mayor Brewer, Vice Mayor Longwell, Council Member Lavonta Williams, Council Member Sue Schlapp, Council Member Roger Smith, Council Member Paul Gray, and Council Member Janet Miller to attend the NLC Congressional Cities Conference in Washington, DC, March 12-16, 2011.

RECOMMENDED ACTION: Approve the expenditures.

## **XI. COUNCIL MEMBER APPOINTMENTS**

### 1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

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## **XII. CONSENT AGENDA**

### 1. Report of Board of Bids and Contracts

RECOMMENDED ACTION: Receive and file report; approve Contracts;  
authorize necessary signatures.

### 2. Applications for Licenses:

<u>Renewal</u>	<u>2011</u>	<u>Address</u>
Robert Floyd	Kellogg Gift Shop Inc. dba Patricia's	6143 West Kellogg

RECOMMENDED ACTION: Approve the licenses.

### 3. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2011</u>	<u>(Consumption off Premises)</u>
Jaspal Singh Mann	Best Retailers LLC	2950 North Ohio

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

### 4. Preliminary Estimates:

- a. Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.

### 5. Agreements/Contracts:

- a. Relocation of ATT Remote Terminal, located at 119th Street West, between Kellogg and Maple. (District V)
- b. Interactive Customer Information System (CIS) Roadmapping and Optimization.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

### 6. Design Services Agreement:

- a. Electrical Service Design for Lawrence-Dumont Stadium. (District IV)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Change Orders:

- a. Change Order No. 1: Waterline for Bentley Tie-In.
- b. Change Order No. 2: Hydraulic Improvement, between Harry and Kellogg. (District I)

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

8. Property Acquisition:

- a. Acquisition of a Temporary Easement at 3220 South Seneca for the Seneca, 31st Street South to Interstate 235 Road Improvement Project. (District IV)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

9. Minutes of Advisory Boards/Commissions

Police and Fire Retirement System, December 15, 2010

Transit Advisory Board, January 14, 2011

Board of Appeals of Refrigeration, Air-Conditioning, Warm Air Heating and Boiler, December 23, 2010

RECOMMENDED ACTION: Receive and file.

10. Contracts and Agreements for January 2011.

RECOMMENDED ACTION: Receive and file.

11. Abatement of Dangerous and Unsafe Structures. (Districts I, II, III, IV and VI)

RECOMMENDED ACTION: Approve the proposed assessments and place the ordinances of first reading.

12. Nuisance Abatement Assessments. (Districts I, II, III, IV and VI)

RECOMMENDED ACTION: Approve the proposed assessments.

13. Kellogg, from Cypress to 159th Street East. (District II)

RECOMMENDED ACTION: Place the amending ordinance on First Reading and authorize the necessary signatures.

14. Correction of Prior Graffiti Ordinance.

RECOMMENDED ACTION: Approve the ordinance.

15. NRPA Return and Restore Grant. (District VI)

RECOMMENDED ACTION: Approve the grant application process, accept the grant funds of \$5,000, and authorize all necessary signatures.

16. Second Reading Ordinances: (First Read February 1,, 2011)
  - a. Second Reading Ordinances - (None)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Approval of Forgivable Loan Agreement, MoJack (District I)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendations:** Approve the incentives and forgivable loan agreement and place the Home Rule Ordinance on first reading.

**Background:** MoJack Distributors, LLC (“MoJack”) began in 2007 when the manufacturing and distribution rights to the only riding lawn tractor lift of its type, the MoJack, was purchased. In June of 2007, MoJack transferred fabrication operations to China; however, final assembly and distribution of the product takes place at the company’s corporate headquarters at 3971 North Woodlawn in northeast Wichita.

The Greater Wichita Economic Development Coalition (GWEDC) worked with MoJack to assist in its plans to expand production and relocate its operations to 3535 North Rock Road in east Wichita. The GWEDC coordinated the development of an incentive package with City, County and State officials, which is presented herewith for approval of the City’s portion.

**Analysis:** The MoJack is a unique tool that allows owners of riding lawn mowers to easily raise the mower for easy access to the undercarriage for maintenance. The MoJack’s market introduction occurred at the Green Industry Expo in Louisville, KY in 2007. In 2009 MoJack won a national award for Outdoor Power Equipment Mower Accessory of the year. Over the past two years MoJack’s market share has expanded tremendously through commercial and retail channels and over the past year MoJack has made significant progress in consumer acceptance and enjoyed an increased presence in retail stores. To meet the rising demand for their product, MoJack proposes to acquire, renovate and move into expanded space at a total investment of approximately \$3,645,000.

The City of Wichita, Sedgwick County and the State of Kansas have partnered to offer economic development assistance to the company. The City and Sedgwick County will provide \$35,000 each in forgivable loan funds to offset equipment costs, subject to governing body approval. MoJack has agreed to retain 10 existing Wichita positions, and as a condition for forgiveness of the loan, will increase that employment by 53, for a minimum of 63 positions within the next five years, at an average salary of \$39,623 per year. The State of Kansas incentive offer includes tax credits under the High Performance Incentive Program (HPIP), sales tax exemption under the Enterprise Zone Program and a training grant under the Kansas Industrial Training (KIT) Program.

The new location for Mojack is in the former space occupied by Linen N’ Things in the Comotara power Center on North Rock Road. Mojack will purchase the entire building, which also houses an Office Depot store, and lease the other space to Office Depot. The GWEDC incentive offer also included a 100% Economic Development Exemption (EDX) property tax exemption for a 5+5 year term on the portion of the building occupied by MoJack, which has been vacant for the last two years. The company is in the process subdividing the building into separate condominiums and will submit an EDX application when this is complete.

**Financial Considerations:** The forgivable loan proceeds in the amount of \$35,000 will be provided to MoJack from funds budgeted in the Economic Development Fund for economic development incentives in 2011.

As part of GWEDC's analysis of this project, the return-on-investment was calculated for the proposed incentive package:

City of Wichita	2.05 to one
General Fund	1.64 to one
Debt Service	3.03 to one
Sedgwick County	1.37 to one

**Goal Impact:** Economic Vitality and Affordable Living. Providing economic development incentives to MoJack retains critical manufacturing jobs and encourages future growth of the company.

**Legal Considerations:** The Law Department has approved the documents as to form. The City's exercise of home rule authority is necessary to provide the cash incentive; this requires the adoption of an ordinance for approval.

**Recommendation/Actions:** It is recommended that the City Council approve the incentive offer and approve the forgivable loan agreement for MoJack Distributors, LLC, place the Home Rule Ordinance on first reading and authorize the necessary signatures.

**Attachments:** Forgivable Loan Agreement and Promissory Note, Ordinance

## FORGIVABLE LOAN AGREEMENT and PROMISSORY NOTE

This Loan Agreement and Promissory Note (the "Agreement"), effective this \_\_\_\_ day of February 2011, is entered into between the following parties:

Lender: City of Wichita, Kansas ("Lender")  
455 N. Main  
Wichita, Kansas 67202  
Contact Person/Title: Allen Bell, Director of Urban Development  
Phone: 316-268-4524 EMAIL: [abell@wichita.gov](mailto:abell@wichita.gov)

Borrower: MoJack Distributors, LLC. ("Borrower")  
3971 North Woodlawn  
Wichita, Kansas 67220  
Contact Person/Title: Daniel Drake / CEO  
Phone: (316) 204-4312 EMAIL: [dan@libertyasset.com](mailto:dan@libertyasset.com)  
FEIN: # \_\_\_\_\_

WHEREAS, it has been determined by the Lender that an economic emergency or unique opportunity exists which warrants funding to secure economic benefits or avoid or remedy economic losses; and

WHEREAS, the Borrower has specified that this funding will be used to purchase new machinery and equipment in Wichita, Sedgwick County, Kansas; and

WHEREAS, the Lender has authorized an expenditure of up to \$35,000 for the purpose of making a loan to the Borrower under such terms and conditions as may be prescribed by the Lender.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements, the parties agree as follows:

1) **Loan Amount and Terms**: Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide the Borrower with the principal sum of up to **\$35,000** for a sixty (60) month period. Interest will accrue from the date of disbursement at the rate of zero percent (0.0%) per annum on the unpaid balance. Should a default occur, repayment of all principal and interest will be made immediately in accordance with the provisions shown below. This loan is not transferable.

2) **Forgiveness of Debt**: The Borrower promises to create and maintain minimum employment levels at the Wichita, Sedgwick County, Kansas facility, starting from a base employment level of **10 full-time (\$52,000 average salary)**, at the end of each of five (5) years as shown in the following schedule:

	Year 1(2011)	Year 2(2012)	Year 3(2013)	Year 4(2014)	Year 5(2015)
New Positions:	24	17	4	4	4
Base Employment:	10	34	51	55	59
<b>Total Employment:</b>	<b>34</b>	<b>51</b>	<b>55</b>	<b>59</b>	<b>63</b>
Annualized Wages:	<b>\$1,470,952</b>	<b>\$2,093,543</b>	<b>\$2,252,035</b>	<b>\$2,410,527</b>	<b>\$2,569,019</b>

Job figures reflect full-time equivalent (FTE) positions only. One FTE is equal to 2080 hours earned per year, including vacation. Average salary of new positions added to the base level shall be at least **\$39,623** per year.

The outstanding principal balance will be divided by the total number of years in the term, and the resulting figure will be the "installment". The first anniversary date for meeting the first year's job creation commitment shall be **December 31, 2011**. On the first anniversary and at each scheduled anniversary date

thereafter where the Borrower has achieved the required job and wage commitment, an amount equal to an installment, plus any accrued interest, will be forgiven.

However, in the event the Borrower ceases to operate as **MoJack Distributors, LLC** in Wichita, Sedgwick County, Kansas during the term of this agreement, any principal and interest which has been forgiven will be repaid in accordance with paragraph (16) below.

In the event of a technical default under this section, the Borrower has the right of appeal to Lender, if compelling evidence can be presented demonstrating that the default is the result of dramatic, unforeseen changes in economic or market conditions. In the event of an appeal, the Lender will have the sole discretion to enforce the provisions as set forth in paragraph (16) below.

3) **Collateral**: None is required under this Agreement.

4) **Mortgage/Security Agreement**: Not applicable.

5) **Insurance**: The Borrower agrees to provide and maintain at its own expense casualty and hazard insurance covering loss by fire or wind with extended coverage insuring all of the real estate, buildings, fixtures and improvements and all business machinery, equipment, furnishings and furniture at its Wichita, Sedgwick County, Kansas facility. Evidence of such coverage will be provided to the Lender upon request. The total amount of the insurance policy shall be sufficient to pay all indebtedness to lien holders and other parties with an interest in this property, and pay the Lender the entire outstanding principal balance and accrued interest. In the event of such loss, the Borrower agrees to repay the Lender as detailed in section 16(A)(ii) below, subject to item (6).

6) **Force Majeure**: In the event that operations at the worksite are impaired or suspended due to uncontrollable forces of nature, the Borrower will be given a reasonable period of time, as determined in the sole discretion of the Lender, in which to reestablish any lost jobs. The term of this agreement will be extended by the length of this period, and no contractual penalty will be imposed on the company during this period.

7) **Release of Mortgage/Security Agreement**: Not applicable.

8) **Life Insurance**: Not applicable.

9) **Use of Funds**: The monies from this loan shall be used by the Borrower to pay for costs directly related to **MoJack Distributors, LLC** at the Borrower's worksite at 3535 North Rock Road, Wichita, Sedgwick County, Kansas. Any machinery and equipment obtained using these loan funds will be promptly identified to the Lender, including narrative description and serial number, and will remain in the Wichita, Sedgwick County, Kansas facility for the duration of this agreement. The Lender or its representative shall be afforded the right of inspection of such machinery and equipment throughout the term of this agreement.

10) **Services Provided to Borrower**: The Lender is not obligated to provide any services to the Borrower other than those specified in the Agreement.

11) **Related Contracts**: The Borrower shall provide, upon written request, copies of all contracts entered into by the Borrower for activities covered by the loan monies.

12) **Period of Performance**: The Borrower may be reimbursed with loan funds for expenses incurred prior to the date of this Agreement, if they were made in connection with activities defined in item (9) above.

Activities will terminate when all conditions of the Agreement have been met within any specified time frames, or by mutual consent of all parties to the Agreement, or when a default situation arises, unless the Lender chooses not to terminate the Agreement.



13) **Financial Management**: Borrower shall keep accounting records in conformance with generally accepted accounting principles, and make such records and all related reports, files, documents and other papers pertaining to the funds provided under this Agreement available for audits, examinations and monitoring if requested by Lender; such records will be retained for a period of three (3) years after termination of the loan period or repayment of the debt in full. The accounting system used by the Borrower shall clearly establish records of budgets and expenditures for the activities funded with the loan monies.

14) **Monitoring and Reporting**: A random audit, or audits, may be conducted by the Lender, or a designated representative of the Lender, to assure accountability of loan expenditures and examine the status of any machinery and equipment acquired with this loan funding.

The Borrower will provide to Lender, on an annual basis and for a period of five (5) years after completion of the term, a report for the Borrower's Wichita, Sedgwick County, Kansas facility which lists the number of full-time equivalent employees, the total payroll as defined in item (2) of this Agreement, and a record of capital investment for the most recent report period and accumulated since the beginning of the report periods. Each report will be submitted within 60 days of the anniversary date of this Agreement.

15) **Waivers**: The Borrower hereby waives presentment, demand of payment, protest, and any and all other notices and demands whatsoever. No waiver of any payment or other right under this Agreement shall operate as a waiver of any other payment or right.

16) **Default**: This Agreement shall be considered in default if:

- (A) Upon any default or failure to properly perform under any clause in this Agreement (or the provisions of any security agreement(s) or mortgage documents which secure this Agreement).
  - (i) If, on the scheduled anniversary, employment levels are below the minimums specified in item (2) of this Agreement, the following repayment is required within thirty (30) days:
    - a) the outstanding principal balance will be divided by the number of remaining anniversary dates, to produce the principal amount due, plus
    - b) interest accrued since the previously scheduled anniversary date.
  - (ii) If the Borrower ceases to operate in Wichita, Sedgwick County, Kansas during the term of this Agreement, the following repayment is required:
    - a) the entire outstanding principal amount is immediately due and payable, plus
    - b) any principal and interest previously forgiven as specified in item (2) above, plus
    - c) interest penalties equal to a twelve percent (12%) compounded annual rate calculated for a 5 year period against the highest outstanding principal amount over the term of the loan.
  - (iii) Upon audit, any loan funds shown to have been used for other than the intended purposes shall be repaid with interest to Lender by Borrower. Such unintended purposes would include, but not be limited to, the acquisition of machinery and equipment which is not used at the Wichita, Sedgwick County, Kansas facility throughout the term of this loan. The amount to be repaid shall be such principal plus twenty-five percent (25%) compounding interest accrued from the date of the initial draw-down against this loan.
  - (iv) If the Borrower otherwise defaults in any manner on the obligations set forth in this Agreement, which default continues for 15 days after written notice of such default from Lender to Borrower, the following repayment is required:
    - a) any principal balance outstanding on the loan is due and payable; and
    - b) interest penalties equal to a twelve percent (12%) compounded annual rate calculated against the principal balance for the period during which it has been outstanding.
- (B) Upon any occurrence under this Agreement or security agreements or mortgage documents by which this loan may or shall become due and payable.
- (C) At any time that the Lender determines in good faith that the prospect of any payment required by this note is impaired.

In the event of continued default following a fifteen (15) day written notice of default, the Lender may, at its option, declare all unpaid indebtedness evidenced by this Agreement and any modifications thereof, immediately due and payable, without further notice, regardless of date of maturity. The Lender's failure to exercise this option when available at any point in time shall in no way invalidate its right to exercise the option in future default situations. Should it become necessary to collect the monetary obligations of this Agreement through an attorney, the Borrower agrees to pay all costs of collecting these monies, including reasonable attorneys' fees to the extent permitted by law, whether collected by suit, foreclosure, or otherwise.

17) **Indemnification**: The Borrower shall indemnify, defend, and hold harmless the Lender and its respective officers and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this Agreement by the Borrower or any party in a relationship with the Borrower which is a result of this Agreement. The liability of the Borrower under this Agreement shall continue after the termination of the Agreement with respect to any liabilities, claims, suits, judgments and damages resulting from acts occurring prior to the termination of this Agreement.

18) **Amendments**: Changes to this Agreement will not be effective or binding unless in writing and signed by both parties to the Agreement.

19) **Compliance with the Law**: The Borrower agrees to operate in Wichita, Sedgwick County, Kansas in full compliance with applicable federal, state and local laws without limitation.

20) **Authorization to Contract**: Before or at the time of execution of the Agreement, the Borrower must be able to provide evidence that it is duly incorporated, in good standing in the state of its incorporation, authorized to do business in the State of Kansas, and authorized to borrow money; and evidence shall be provided that the person executing the Agreement and any supporting documents is authorized to act on behalf of the Borrower in such a transaction.

21) **Termination of Agreement**: Lender may terminate the loan, in whole or in part, if the Borrower has failed to comply with the conditions of the Agreement. The Borrower will receive written notice and the reasons for termination.

22) **Divisibility**: The invalidity of any one or more phrases, sentences, clauses, or section contained in this Agreement shall not affect the remaining portions of this Agreement, or any part thereof. Further, various headings included in this Agreement exist purely as an aid to locate particular wording, and do not in and of themselves in any way affect the substance of this Agreement.

23) **Complete Document**: The parties agree this Agreement is a complete document in which all obligations have been reduced to writing, and there are no understandings, agreements, conventions or covenants not included herein.

24) **Assignment**: The parties further agree that this Agreement may not be assigned by the Borrower without prior written approval by the Lender.

25) **Binding Effect**: The provisions of this Agreement shall both bind and benefit the Borrower's successors, assigns, guarantors, endorsers, and any other person or entity now or hereafter liable hereon.

26) **Notices**: Notifications required pursuant to this contract shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

Borrower: MoJack Distributors, LLC  
3535 North Rock Road  
Wichita, Kansas 67226  
Contact Person/Title: Daniel Drake / CEO

City: Wichita City Clerk's Office  
525 N. Main, 13<sup>th</sup> Floor  
Wichita, KS 67202

Office of Urban Development  
Attn: Allen Bell, Director  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, KS 67202

27) **Cash Basis and Budget Laws.** The right of Lender to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that Lender shall at all times stay in conformity with such laws, and as a condition of this Agreement Lender reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

28). **Equal Opportunity and Affirmative Action.**

In carrying out this contract, Borrower shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

A. Borrower shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Borrower shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Borrower fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by Lender.

D. If Borrower is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by Lender.

E. Borrower shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

29) **Kansas Law.** This agreement shall be construed in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties have signed their names below.

LENDER:

CITY OF WICHITA, KANSAS

\_\_\_\_\_  
Carl Brewer , Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, CountyClerk

BORROWER:

MOJACK DISTRIBUTORS, LLC

\_\_\_\_\_  
Daniel Drake, CEO

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, City Attorney

ORDINANCE NO. 48-939

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A FORGIVABLE LOAN AGREEMENT AND PROMISSORY NOTE BY AND BETWEEN MOJACK DISTRIBUTORS, LLC AND THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas (the “City”) is authorized by Article 12, Section 5, of the Kansas Constitution to determine, by ordinance, its local affairs and government; and,

WHEREAS, the Governing Body of the City finds and determines that it is desirable to act in cooperation with Sedgwick County and the State of Kansas in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas, by taking action to approve a forgivable loan, conditioned on local job creation and retention, to assist MoJack Distributors, LLC, in expanding its manufacturing and distribution facility located in Wichita, Kansas,

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS:

Section 1. Findings and Approval of Forgivable Loan. The City’s Governing Body hereby finds that providing a forgivable loan in the amount of \$35,000, to MoJack Distributors, LLC, will advance economic development in Wichita, Kansas and will serve a public purpose.

Section 2. Authorization of the Forgivable Loan Agreement and Promissory Note. The Mayor of the City of Wichita, Kansas is hereby authorized and directed to execute and deliver the Forgivable Loan Agreement and Promissory Note presented herewith, by and between MoJack Distributors, LLC, as Borrower and the City of Wichita as Lender for and on behalf of and as the act and deed of the City with such minor corrections or amendments thereto as the Mayor shall approve (which approval shall be evidenced by his execution thereof) and any such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk and any Deputy City Clerk of the City are hereby authorized and directed to attest the execution of the Forgivable Loan Agreement and Promissory Note, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 3. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City of Wichita, Kansas and publication once in the official newspaper of the City.

PASSED by the Governing Body of the City of Wichita, Kansas this 15th day of February, 2011.

CITY OF WICHITA, KANSAS

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Carl Brewer, Mayor

ATTEST:

---

Karen Sublett, City Clerk

[Seal]

APPROVED AS TO FORM:

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Gary E. Rebenstorf, City Attorney

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Approval of Forgivable Loan Agreement (Apex Engineering International)  
(District IV)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendations:** Approve the forgivable loan agreement and place the ordinance on first reading.

**Background:** Apex Engineering International LLC (“Apex Engineering”) was originally founded in the early 1970s and is a manufacturer of aircraft parts and assemblies, whose principal location is at 1234 North Wellington Place in central Wichita, with satellite operations at 1818 West 2<sup>nd</sup> Street and in Ada, Oklahoma. Apex Engineering has continued to grow its business, even during the recent economic downturn, and needs to expand its production facilities in order to meet future production requirements.

In 2009, Apex Engineering approached the Greater Wichita Economic Development Coalition (GWEDC) for assistance in seeking economic development incentives for their expansion. At the same time, the company held discussions with officials from Ada and from Jacksonville, Florida. Working with state and local government partners, GWEDC made an offer of incentives, subject to formal approvals by the governing bodies, which resulted in Apex Engineering’s decision to expand in Wichita.

**Analysis:** To implement the expansion, Apex Engineering will acquire and renovate the entire former Weckworth Manufacturing factory at 1818 West 2<sup>nd</sup> Street, where they are currently leasing 90,000 square feet. The expansion will add another 100,000 square feet of production and warehouse space and 10,000 square feet of office space for relocation of corporate headquarters from Wellington Place to the 2<sup>nd</sup> Street facility, allowing for an additional expansion of production space at the Wellington Place facility. Apex Engineering will also acquire additional machinery and equipment in the amount of \$5.3 million, for a total capital investment of \$8.0 million.

Apex Engineering currently employs 180 workers in Wichita. As a result of the expansion, the company will hire an additional 139 employees over the next five years, at an average annual wage of \$46,096.

**PROPOSED INCENTIVES**

State of Kansas:	SKILL Training Grant	\$250,000
	MPI Grant	<u>100,000</u>
	Total IMPACT Program	\$350,000
	Enterprise Zone/HPIP tax credits	\$922,000
	Total State Incentive Package	\$1,272,000
Sedgwick County:	Forgivable Loan	\$220,000
City of Wichita:	Forgivable Loan	\$220,000

Under the terms of the attached Forgivable Loan Agreement and Promissory Note, the forgivable loan proceeds will be used to purchase new machinery and equipment. The forgivable loan will have a term of five years ending December 31, 2015. The loan principal will be forgiven in equal annual installments at the end of each year, provided that the employment and wage commitments set forth in the agreement have been met. Unforgiven principal will carry forward and any unforgiven principal remaining at the end of the loan term shall be immediately due and payable. In the event Apex Engineering ceases operations in Wichita during the term of the loan, the entire original principal will be immediately due and payable, plus interest from the start of the loan at 12% APR.

**Financial Considerations:** The City's \$220,000 forgivable loan will be paid from funds in the Economic Development Fund appropriated for that purpose. The fiscal impact analysis performed by WSU's Center for Economic Development and Business Research (CEDBR) shows the following ratios of benefits-to-costs:

City of Wichita	3.47 to one
City General Fund	1.32 to one
Sedgwick County	1.42 to one

**Goal Impact:** Economic Vitality and Affordable Living. Providing economic development incentives to Apex Engineering retains critical manufacturing jobs and encourages future growth of the company.

**Legal Considerations:** The Law Department has approved the attached documents as to form. The City's exercise of home rule authority is necessary to provide the cash incentive; this requires the adoption of a home rule ordinance (attached) for approval.

**Recommendation/Action(s):** It is recommended that the City Council approve the forgivable loan agreement for Apex Engineering, place the home rule ordinance on first reading and authorize the necessary signatures.

**Attachments**    Forgivable Loan Agreement and Promissory Note  
                         Home Rule Ordinance



## FORGIVABLE LOAN AGREEMENT and PROMISSORY NOTE

This Forgivable Loan Agreement and Promissory Note (the "Agreement"), effective this \_\_\_\_ day of February 2011, is entered into between the following parties:

Lender: City of Wichita, Kansas ("Lender")  
455 N. Main  
Wichita, Kansas 67202  
Contact Person/Title: Allen Bell, Director of Urban Development  
Phone: 316-268-4524 EMAIL: [abell@wichita.gov](mailto:abell@wichita.gov)

Borrower: Apex Engineering International, LLC ("Borrower")  
1234 Wellington Place  
Wichita, Kansas 67203  
Contact Person/Title: Gene Johnson / CFO  
Phone: (316) 262-1494 EMAIL: [gene.johnson@aeillc.com](mailto:gene.johnson@aeillc.com)  
FEIN: -02-0691080

WHEREAS, it has been determined by the Lender that an economic emergency or unique opportunity exists which warrants funding to secure economic benefits or avoid or remedy economic losses; and

WHEREAS, the Borrower has specified that this funding will be used to purchase new machinery and equipment in Wichita, Sedgwick County, Kansas; and

WHEREAS, the Lender has authorized an expenditure of \$220,000 for the purpose of making a loan to the Borrower under such terms and conditions as may be prescribed by the Lender.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements, the parties agree as follows:

1) **Loan Amount and Terms**: Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide the Borrower with the principal sum of **\$220,000** for a sixty (60) month period. Interest will accrue from the date of disbursement at the rate of zero percent (0.0%) per annum on the unpaid balance. Should a default occur, repayment of all principal and interest will be made immediately in accordance with the provisions shown below. This loan is not transferable.

2) **Forgiveness of Debt**: The Borrower promises to create and maintain minimum employment levels at the Wichita, Sedgwick County, Kansas facility, starting from a base employment level of **180** full-time, at the end of each of five (5) years as shown in the following schedule:

	Year 1(2011)	Year 2(2012)	Year 3(2013)	Year 4(2014)	Year 5(2015)
New Positions:	34	105	0	0	0
Base Employment:	180	214	319	319	319
<b>Total Employment:</b>	<b>214</b>	<b>319</b>	<b>319</b>	<b>319</b>	<b>319</b>
Annualized Wages:	<b>\$9,600,000</b>	<b>\$14,700,000</b>	<b>\$15,100,000</b>	<b>\$15,100,000</b>	<b>\$15,100,000</b>

Job figures reflect full-time equivalent (FTE) positions only. One FTE is equal to 2080 hours earned per year, including vacation. Average salary of positions added to the base level shall be at least **\$46,096** per year.

The outstanding principal balance will be divided by the total number of years in the term, and the resulting figure will be the "installment". The first anniversary date for meeting the first year's job creation commitment shall be **December 31, 2011**. On the first anniversary and at each scheduled anniversary date

thereafter where the Borrower has achieved the required job and wage commitment, an amount equal to an installment, plus any accrued interest, will be forgiven.

However, in the event the Borrower ceases to operate as **Apex Engineering International, L.L.C.** in Wichita, Sedgwick County, Kansas during the term of this agreement, any principal and interest which has been forgiven will be repaid in accordance with paragraph (16) below.

In the event of a technical default under this section, the Borrower has the right of appeal to Lender, if compelling evidence can be presented demonstrating that the default is the result of dramatic, unforeseen changes in economic or market conditions. In the event of an appeal, the Lender will have the reasonable discretion to enforce the provisions as set forth in paragraph (16) below.

3) **Collateral**: None is required under this Agreement.

4) **Mortgage/Security Agreement**: Not applicable.

5) **Insurance**: The Borrower agrees to provide and maintain at its own expense casualty and hazard insurance covering loss by fire or wind with extended coverage insuring all of the real estate, buildings, fixtures and improvements and all business machinery, equipment, furnishings and furniture at its Wichita, Sedgwick County, Kansas facility. Evidence of such coverage will be provided to the Lender upon request. The total amount of the insurance policy shall be sufficient to pay all indebtedness to lien holders and other parties with an interest in this property, and pay the Lender the entire outstanding principal balance and accrued interest. In the event of such loss, the Borrower agrees to repay the Lender as detailed in section 16(A)(ii) below, subject to item (6).

6) **Force Majeure**: In the event that operations at the worksite are impaired or suspended due to uncontrollable forces of nature the Borrower will be given a reasonable period of time, as determined in the sole discretion of the Lender, in which to reestablish any lost jobs. The term of this Agreement will be extended by the length of this period, and no contractual penalty will be imposed on the Borrower during this period.

7) **Release of Mortgage/Security Agreement**: Not applicable.

8) **Life Insurance**: Not applicable.

9) **Use of Funds**: The monies from this loan shall be used by the Borrower to purchase new machinery and equipment for Apex Engineering International, L.L.C., 1234 Wellington Place, Wichita, Sedgwick County, Kansas. Any machinery and equipment obtained using these loan funds will be promptly identified to the Lender, including narrative description and serial number, and will remain in the Wichita, Sedgwick County, Kansas facility for the duration of this Agreement. The Lender or its representative shall be afforded the right of inspection of such machinery and equipment throughout the term of this Agreement.

10) **Services Provided to Borrower**: The Lender is not obligated to provide any services to the Borrower other than those specified in the Agreement.

11) **Related Contracts**: The Borrower shall provide, upon written request, copies of all contracts entered into by the Borrower for activities covered by the loan monies.

12) **Period of Performance**: The Borrower may be reimbursed with loan funds for expenses incurred prior to the date of this Agreement, if they were made in connection with activities defined in item (9) above.

Activities will terminate when all conditions of the Agreement have been met within any specified time frames, or by mutual consent of all parties to the Agreement, or when a default situation arises, unless the Lender chooses not to terminate the Agreement.

13) **Financial Management:** Borrower shall keep accounting records in conformance with generally accepted accounting principles, except for normal year-end adjustments only made at year end, and make such records and all related reports, files, documents and other papers pertaining to the funds provided under this Agreement available for audits, examinations and monitoring if requested by Lender; such records will be retained for a period of three (3) years after termination of the loan period or repayment of the debt in full. The accounting system used by the Borrower shall clearly establish records of budgets and expenditures for the activities funded with the loan monies.

14) **Monitoring and Reporting:** A random audit, or audits, may be conducted by the Lender, or a designated representative of the Lender, to assure accountability of loan expenditures and examine the status of any machinery and equipment acquired with this loan funding. The lender will provide reasonable notice of such audits and allow Borrower reasonable input on timing of such audit to ensure the audit does not disrupted normal business or coincide with other audits at Borrower..

The Borrower will provide to Lender, on an annual basis and for a period of five (5) years after completion of the term, a report for the Borrower's Wichita, Sedgwick County, Kansas facility which lists the number of full-time equivalent employees, the total payroll as defined in item (2) of this Agreement, and a record of capital investment for the most recent report period and accumulated since the beginning of the report periods. Each report will be submitted within 60 days of the anniversary date of this Agreement.

15) **Waivers:** The Borrower hereby waives presentment, demand of payment, protest, and any and all other notices and demands whatsoever. No waiver of any payment or other right under this Agreement shall operate as a waiver of any other payment or right.

16) **Default:** This Agreement shall be considered in default if:

- (A) Upon any default or failure to properly perform under any clause in this Agreement (or the provisions of any security agreement(s) or mortgage documents which secure this Agreement).
  - (i) If, on the scheduled anniversary, employment levels are below the minimums specified in item (2) of this Agreement, the following repayment is required within thirty (30) days:
    - a) the outstanding principal balance will be divided by the number of remaining anniversary dates, to produce the principal amount due, plus
    - b) interest accrued since the previously scheduled anniversary date.
  - (ii) If the Borrower ceases to operate in Wichita, Sedgwick County, Kansas during the term of this Agreement, the following repayment is required:
    - a) the entire outstanding principal amount is immediately due and payable, plus
    - b) any principal and interest previously forgiven as specified in item (2) above, plus
    - c) interest penalties equal to a twelve percent (12%) compounded annual rate calculated for a 5 year period against the highest outstanding principal amount over the term of the loan.
  - (iii) Upon audit, any loan funds shown to have been used for other than the intended purposes shall be repaid with interest to Lender by Borrower. Such unintended purposes would include, but not be limited to, the acquisition of machinery and equipment which is not used at the Wichita, Sedgwick County, Kansas facility throughout the term of this loan. The amount to be repaid shall be such principal plus twenty-five percent (25%) compounding interest accrued from the date of the initial draw-down against this loan.
  - (iv) If the Borrower otherwise defaults in any manner on the obligations set forth in this Agreement, which default continues for 15 days after written notice of such default from Lender to Borrower, the following repayment is required:
    - a) any principal balance outstanding on the loan is due and payable; and
    - b) interest penalties equal to a twelve percent (12%) compounded annual rate calculated against the principal balance for the period during which it has been outstanding.

- (B) Upon any occurrence under this Agreement or security agreements or mortgage documents by which this loan may or shall become due and payable.
- (C) At any time that the Lender determines in good faith that the prospect of any payment required by this note is impaired.

In the event of continued default following a fifteen(15) day written notice of default, the Lender may, at its option, declare all unpaid indebtedness evidenced by this Agreement and any modifications thereof, immediately due and payable, without further notice, regardless of date of maturity. The Lender's failure to exercise this option when available at any point in time shall in no way invalidate its right to exercise the option in future default situations. Should it become necessary to collect the monetary obligations of this Agreement through an attorney, the Borrower agrees to pay all costs of collecting these monies, including reasonable attorneys' fees to the extent permitted by law, whether collected by suit, foreclosure, or otherwise.

17) **Indemnification:** The Borrower shall indemnify, defend, and hold harmless the Lender and its respective officers and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this Agreement by the Borrower. The liability of the Borrower under this Agreement shall continue after the termination of the Agreement with respect to any liabilities, claims, suits, judgments and damages resulting from acts occurring prior to the termination of this Agreement.

18) **Amendments:** Changes to this Agreement will not be effective or binding unless in writing and signed by both parties to the Agreement.

19) **Compliance with the Law:** The Borrower agrees to operate in Wichita, Sedgwick County, Kansas in full compliance with applicable federal, state and local laws.

20) **Authorization to Contract:** Before or at the time of execution of the Agreement, the Borrower must be able to provide evidence that it is duly incorporated, in good standing in the state of its incorporation, authorized to do business in the State of Kansas, and authorized to borrow money; and evidence shall be provided that the person executing the Agreement and any supporting documents is authorized to act on behalf of the Borrower in such a transaction.

21) **Termination of Agreement:** Lender may terminate the loan, in whole or in part, if the Borrower has failed to comply with the conditions of the Agreement. The Borrower will receive written notice and the reasons for termination.

22) **Divisibility:** The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement, or any part thereof. Further, various headings included in this Agreement exist purely as an aid to locate particular wording, and do not in and of themselves in any way affect the substance of this Agreement.

23) **Complete Document:** The parties agree this Agreement is a complete document in which all obligations have been reduced to writing, and there are no understandings, agreements, conventions or covenants not included herein.

24) **Assignment:** The parties further agree that this Agreement may not be assigned by the Borrower without prior written approval by the Lender.

25) **Binding Effect:** The provisions of this Agreement shall both bind and benefit the Borrower's successors, assigns, guarantors, endorser, and any other person or entity now or hereafter liable hereon.

26) **Notices:** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon the second business day after mailing.

Borrower: Apex Engineering International, L.L.C. ("Borrower")  
1234 Wellington Place  
Wichita, Kansas 67203  
Contact Person/Title: Gene Johnson / CFO

City: City Clerk's Office  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, KS 67202

And

Office of Urban Development  
Attn: Allen Bell, Director  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, KS 67202

27) **Cash Basis and Budget Laws.** The right of Lender to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that Lender shall at all times stay in conformity with such laws, and as a condition of this Agreement Lender reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

28). **Equal Opportunity and Affirmative Action.**

In carrying out this Agreement, Borrower shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

A. Borrower shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Borrower shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Borrower fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Borrower shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by Lender.

D. If Borrower is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Borrower shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part by Lender.

E. Borrower shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

29) **Kansas Law** This Agreement shall be construed in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties have signed their names below.

LENDER:

CITY OF WICHITA

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary L. Rebenstorf, City Attorney

BORROWER:

Apex Engineering International, LLC

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Revised Master:  
02202010

ORDINANCE NO. 48-940

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A FORGIVABLE LOAN AGREEMENT AND PROMISSORY NOTE BY AND BETWEEN APEX ENGINEERING INTERNATIONAL, LLC AND THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas (the “City”) is authorized by Article 12, Section 5, of the Kansas Constitution to determine, by ordinance, its local affairs and government; and,

WHEREAS, the Governing Body of the City finds and determines that it is desirable to act in cooperation with Sedgwick County and the State of Kansas in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas, by taking action to approve a forgivable loan, conditioned on local job creation and retention, to assist Apex Engineering International, LLC , in acquiring, renovating and equipping a manufacturing facility located in Wichita, Kansas,

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS:

Section 1. Findings and Approval of Forgivable Loan. The City’s Governing Body hereby finds that providing a forgivable loan in the amount of \$35,000, to Apex Engineering International, LLC , will advance economic development in Wichita, Kansas and will serve a public purpose.

Section 2. Authorization of the Forgivable Loan Agreement and Promissory Note. The Mayor of the City of Wichita, Kansas is hereby authorized and directed to execute and deliver the Forgivable Loan Agreement and Promissory Note presented herewith, by and between Apex Engineering International, LLC , as Borrower and the City of Wichita as Lender for and on behalf of and as the act and deed of the City with such minor corrections or amendments thereto as the Mayor shall approve (which approval shall be evidenced by his execution thereof) and any such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk and any Deputy City Clerk of the City are hereby authorized and directed to attest the execution of the Forgivable Loan Agreement and Promissory Note, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 3. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City of Wichita, Kansas and publication once in the official newspaper of the City.

PASSED by the Governing Body of the City of Wichita, Kansas this 15th day of February, 2011.

CITY OF WICHITA, KANSAS

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

[Seal]

APPROVED AS TO FORM:

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Gary E. Rebenstorf, City Attorney



City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Petition to approve a Community Improvement District for Eastgate Center Development (District II)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendation:** Accept the petition and adopt the resolution setting a public hearing for consideration of the establishment of a Community Improvement District.

**Background:** In 2009, the Kansas Legislature enacted, and the Governor signed into law, the Community Improvement District Act (CID Act), which allows property owners to petition cities or counties to create districts in which certain special taxes are imposed and the resulting revenue used to fund certain public and private improvements and the payment of certain ongoing operating costs, within the districts. In April, 2010 the City Council adopted a policy which addresses how the City will utilize the tool and outlined the approval process. In December, 2010, the City Council amended the CID Policy to require a public purpose statement in a CID petition, limit the maximum eligible reimbursement amount to 125% of the projected CID revenue, require that notice of public hearing be provided to any existing occupants within the district, and require signs to be posted next to store entrances.

Retail center owner TMC Eastgate, LLC has submitted a petition for a Community Improvement District (CID) for renovation and modernization of the Eastgate Center on the southeast corner of the intersection of Kellogg Drive and Rock Road. The petition signed by owners representing 100% of proposed CID is submitted for City Council approval.

**Analysis:** TMC Eastgate, LLC plans to renovate the center by renovating the façade, refinishing the parking and providing tenant improvements. The estimated total cost of the project is \$53,450,000, a portion of which will be paid by CID. The maximum eligible amount for reimbursement by CID is \$18,528,596 based on 125% of the projected tax revenue. The proposed amount of Community Improvement District sales tax for the district is 1% which will be distributed on a pay-as-you-go basis for up to 22 years.

**Public Purpose Statement:** The proposed project will encourage economic development, increase commercial activity and create jobs by modernizing an aging retail center. This project will help the center remain viable and decrease vacant space, recently as high as 20%. The use of CID will allow the center to attract national retailers not currently in the Wichita market, thus increasing sales tax revenues for the City; and retain an existing national tenant at risk of leaving the area. Interior and exterior improvements made to the center will increase its attractiveness to tenants and customers, maintaining viability and reducing the risk of blight due to vacancy and deterioration.

The Office of Urban Development has conducted a background check on the owners of TMC Eastgate LLC. Staff discovered some unpaid taxes and fines associated with related entities of the owners. Staff has verified that all taxes and fines have been paid. Some building code violations for related entities were also reported. The majority of violations were in a blighted area being redeveloped by one of the owners and will be addressed when the area is redeveloped. All other violations have been resolved. No

other items of concern were found.

To establish a CID, the City Council must adopt a resolution which states that the Council is considering the establishment of the CID and sets a date for a public hearing on the matter. The resolution must then be published at least once each week for two consecutive weeks and be sent by certified mail to all owners and by regular mail to all occupants of property within the proposed CID. Given this process, the earliest date a public hearing may be held for this project would be March 1, 2011. After closing the public hearing, the City Council may adopt an ordinance establishing the district.

**Financial Considerations:** The cost of mailing the Resolution to all owners and occupants of property located within the proposed district will be charged to the Economic Development Fund and will be repaid with administrative fees collected from the district.

The developer has requested pay-as-you-go financing. The City will not issue debt for this project. Proceeds will be held by the City and disbursed pursuant to a development agreement. The City will withhold 5% of the CID revenues distributed by the State, after giving credit for the application fee, and disperse the balance of the CID proceeds to the developer until the maximum amount identified in the petition (\$18,528,596) has been reimbursed or the 22-year term has expired, whichever is earlier.

**Goal Impact:** Economic Vitality and Affordable Living and Quality of Life. This project facilitates renovation of an aging retail center of the City. Business prospects and workers seeking to relocate are attracted to a city that offers convenient shopping options.

**Legal Considerations:** State Law allows Community Improvement Districts to be established by Ordinance following a public hearing. The form of the petition and resolution has been approved by the Law Department as to form.

**Recommendation/Action:** It is recommended that the City Council accept the petition and adopt the resolution setting a public hearing on March 1, 2011 for consideration of the establishment of a Community Improvement District.

**Attachments:** Resolution and Petition

Published in the Wichita Eagle on February 18 and February 25, 2011

**RESOLUTION NO. 11-024**

**A RESOLUTION OF THE CITY OF WICHITA, KANSAS, PROVIDING FOR NOTICE OF A PUBLIC HEARING CONCERNING ADVISABILITY OF THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT WITHIN THE CITY AND THE PROPOSED LEVY OF A COMMUNITY IMPROVEMENT DISTRICT SALES TAX PURSUANT TO K.S.A. 12-6a26 *ET SEQ.*, AS MAY BE AMENDED.**

**WHEREAS**, pursuant to K.S.A. 12-6a26 *et seq.*, as amended (the "Act"), the City of Wichita, Kansas (the "City"), is authorized to create a community improvement district as provided in the Act to provide for the acquisition, improvement, construction, demolition, removal, renovation, reconstruction, restoration, replacement, repair, furnishing and equipping of buildings, structures, facilities, sidewalks, roads, parking lots, traffic signs and signals, utilities, pedestrian amenities, drainage, water, storm and sewer systems, underground gas, heating and electrical services and extensions, water mains and extensions, site improvements, street lights, lighting, street light fixtures, benches, awnings, canopies, walls, trees, landscapes and other cultural amenities (collectively, the "CID Projects" or each a "CID Project"); and

**WHEREAS**, upon proper petition, the Act further authorizes the City, in order to pay the costs of any project which is a CID Project, to impose a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing of taxable services within a community improvement district in any increment of .10% or .25% not to exceed 2% (a "CID Sales Tax") and to reimburse the costs of the such project pursuant to pay-as-you-go financing and/or the issuance of special obligation notes and bonds payable from such community improvement district sales tax; and

**WHEREAS**, a petition (the "Petition") has been filed with the City Clerk of the City proposing the creation of a community improvement district pursuant to the Act (the Eastgate Center CID"), the completion of a project relating thereto as more particularly described on **Exhibit A** attached hereto (the "Project"), and the imposition of a CID Sales Tax in order to pay the costs of the Project; and

**WHEREAS**, the Petition was signed by the owners of all of the land area within the proposed Eastgate Center CID; and

**WHEREAS**, the proposed Eastgate Center CID is located near the southeast corner of the intersection of Kellogg Drive and Rock Road within the City; and

**WHEREAS**, the petition proposes that the City impose a one percent (1%) CID Sales Tax within the Eastgate Center CID which may be levied by ordinance following the hearing; and

**WHEREAS**, the Act provides that prior to creating any community improvement district, the City shall, by resolution, direct and order a public hearing on the advisability of creating such community improvement district and authorizing a CID Project therein and the proposed CID Sales Tax within such district which may be levied by ordinance and shall give notice of said public hearing in accordance with the Act;

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:**

1. Notice is hereby given that a public hearing to consider the advisability of the creation by the City of the Eastgate Center CID and the imposition by the City of a one percent (1%) CID Sales Tax within the Eastgate Center CID shall be held on March 1, 2011, beginning at 9:00 a.m. or as soon thereafter as possible, in the City Council Chambers, City Hall, 455 North Main Street, Wichita, Kansas.

2. The general nature of the proposed Project to be constructed within the proposed Eastgate Center CID is set forth on **Exhibit A** attached hereto and incorporated by reference herein.

3. The estimated cost of the Project within the proposed Eastgate Center CID is \$53,450,000.

4. The Project within the proposed Eastgate Center CID will be financed on a pay-as-you-go basis from revenues received from the imposition of a one percent (1%) CID Sales Tax up to a maximum amount of \$18,528,596 within the proposed Eastgate Center CID.

5. A legal description of the proposed Eastgate Center CID is set forth in **Exhibit B** attached hereto and incorporated herein by reference. A map generally outlining the boundaries of the proposed Eastgate Center CID is attached hereto as **Exhibit C** and incorporated herein by reference.

6. The City Clerk shall give notice of the public hearing in accordance with the provisions of the Act by publishing this resolution at least once each week for two consecutive weeks in the newspaper and sending this resolution by certified mail to all owners. The second publication of this resolution shall occur at least seven days prior to the date of hearing and the certified mailed notice shall be sent at least ten days prior to the date of hearing.

**ADOPTED** by the Governing Body this 8<sup>th</sup> day of February, 2011.

**APPROVED** and **SIGNED** by the Mayor the 8<sup>th</sup> day of February, 2011.

**CITY OF WICHITA, KANSAS**

By: \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, City Attorney

## **EXHIBIT A**

### **PROJECT**

The general nature of the proposed projects (the “**Projects**”) is to renovate and modernize the Eastgate Shopping Center with an estimated overall cost of \$53,450,000 and to finance the construction, maintenance, and procurement of certain improvements, costs, and services within the District, including, but not limited to: land acquisition, infrastructure related items, streets, sidewalks, parking lots and facilities, buildings, facilities, tenant improvements, water management and drainage related items, landscaping, lighting, art, water features and other cultural amenities, ongoing maintenance of the District, marketing, advertisement and economic development, cleaning and maintenance, and the City’s administrative costs in establishing and maintaining the District, and any other items permitted to be financed within the District under the Act.

## **EXHIBIT B**

### **LEGAL DESCRIPTION**

Lots 2 and 4, Block 1; Sharon Ryan Addition to the City of Wichita, Sedgwick County,  
Kansas

# Proposed Eastgate Center Community Improvement District

City of Wichita, Kansas

Proposed Eastgate  
Center Community  
Improvement District



Property Parcels within  
District



Property Parcels outside  
District



Software: ArcGIS 9.3.1  
Hardware: Dell Xeon  
Printer: HP 5000 Plotter

Map Data Source:  
Property Parcels  
provided by  
Sedgewick County GIS.

Road Centerlines  
provided by  
City of Wichita

Wednesday, January 9, 2019 8:21:37 AM  
K:\gis\Projects\GIS\EastgateCenter\_CID.mxd

A 10. Information that appears on this City of Wichita Data Center  
Geographical Information System (GIS) Department page is intended  
for informational purposes only. It is not intended to be used for  
any other purpose. The City of Wichita does not warrant the  
accuracy or completeness of the information.





RECEIVED

DEC 22 '10

CITY CLERK OFFICE

6201 College Boulevard, Suite 500  
Overland Park, KS 66211  
(913) 451-8788  
Facsimile: (913) 451-6205  
www.polsinelli.com

Evan F. Fitts  
(913) 234-7476  
efitts@polsinelli.com

December 20, 2010

**BY FEDERAL EXPRESS**

Members of the Governing Body  
City of Wichita  
c/o Allen Bell  
455 North Main  
Wichita, Kansas 67202

**Re: Eastgate Center Community Improvement District Petition**

Members of the Governing Body:

I am writing on behalf of our client, TMC Eastgate, LLC, to present a community improvement district ("CID") petition affecting property located at the southeast corner of Kellogg Drive and Rock Road. The petition requests that certain CID eligible costs be financed via the imposition of an additional 1% sales tax on all taxable sales within the proposed district. We respectfully request that this matter be placed on the Council's January 11, 2011 agenda to pass a resolution calling a public hearing to consider the advisability of creating the district on February 1, 2011. Please find enclosed with this letter the following documents:

- (1) Executed CID petition signed by the owners of 100% of the property within the district;
- (2) A sources and uses document outlining collection and expenditures of CID revenue;
- (3) A completed developer background questionnaire; and
- (4) A check in the amount of \$5,000.00 for the application fee.

Please feel free to contact me with any questions.

Sincerely,

Evan F. Fitts

Enclosures



## COMMUNITY IMPROVEMENT DISTRICT PETITION

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

- 1) We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows/ provided in **Exhibits A1 and A2**:

### IMPROVEMENT DISTRICT

do hereby petition pursuant to the provisions of K.S.A. 12-6a26 et seq., as amended (the "Act"):

- (a) **General Nature:** That the general nature of the proposed community improvement district ("CID") project, the Eastgate Center CID ("**Project**"), is to finance the construction, maintenance, and procurement of certain improvements, costs, and services within the district, including, but not limited to: land acquisition, infrastructure related items, streets, sidewalks, parking lots and facilities, buildings, facilities, tenant improvements, water management and drainage related items, landscaping, lighting, art, water features and other cultural amenities, ongoing maintenance of the district, marketing, advertisement and economic development, cleaning and maintenance, and the City's and the developer's financing costs (if any) as well as the City's and the developer's administrative and operating costs in establishing and maintaining the District and any other items permitted to be financed within the district under the Act. The undersigned request the City of Wichita to assist the Project by providing community improvement financing in accordance with City of Wichita policy and the Act to finance the above-listed items.
- (b) **Public Purpose:** The public purpose of the Project is to encourage economic development, increased commercial activity, and job creation by enabling the renovation of an aging commercial center to make the center modernized and more attractive to tenants and consumers, thereby assisting the center in retaining existing tenants and attracting a specific national-scale tenant not already in the Wichita market. More specifically, planned improvements include extensive façade renovations, a refinishing of the parking lot, and tenant improvements, all of which will help the center remain viable and decrease its vacant space.
- (c) **Estimated Cost:** That the estimated cost of the Project is **Fifty Three Million Four Hundred Fifty Thousand Dollars (\$53,450,000)** of which the maximum amount eligible for reimbursement is **Eighteen Million Five Hundred Twenty**

**Eight Thousand Five Hundred Ninety Six Dollars (\$18,528,596)**, exclusive of the cost of interest on borrowed money. See attached "**Exhibit A3**" for a detailed budget.

- (d) **Proposed Method of Financing:** That the proposed Projects be financed through the use of a special sales tax on a Pay-as-you-go basis as defined in the Act.
  - (e) **Proposed Amount of Sales Tax:** That the proposed amount of Community Improvement District sales tax, if any, shall be 1% for 22 years, or such lesser number of years as may be required to produce revenues sufficient for the payment of the maximum CID eligible cost identified in (b), above.
  - (f) **Proposed Method and Amount of Assessment if any:** No assessments are proposed hereunder.
  - (g) That a legal description and map of the proposed CID are attached hereto as **Exhibits A1 and A2.**
- 2) It is requested that the improvement hereby petitioned be made with notice and public hearing, pursuant to City policy.
  - 3) That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first, and that the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project.
  - 4) That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by the owners of 100% of the land area within the proposed district. The Governing Body is requested to proceed in the manner provided by statute and City policy.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

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[SIGNATURES FOLLOW ON PAGES BELOW]

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

TMC EASTGATE, LLC

By: \_\_\_\_\_

Name: MICHAEL J. BOYD

Title: MANAGER

STATE OF KANSAS )

COUNTY OF Sedgwick ) ss.

BE IT REMEMBERED that on this 16<sup>th</sup> day of December, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Michael J. Boyd, to me personally known, who being by me duly sworn did say that (s)he is the Managing Member of TMC Eastgate, LLC, and that the within instrument was signed and sealed on behalf of said TMC Eastgate, LLC by authority thereof, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein expressed.

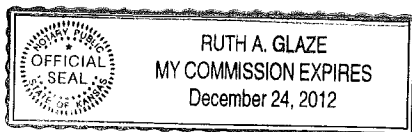
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial seal in the date herein last above written.

My Commission Expires:

[SEAL]

Ruth A. Glaze  
Notary Public in and for said County and State

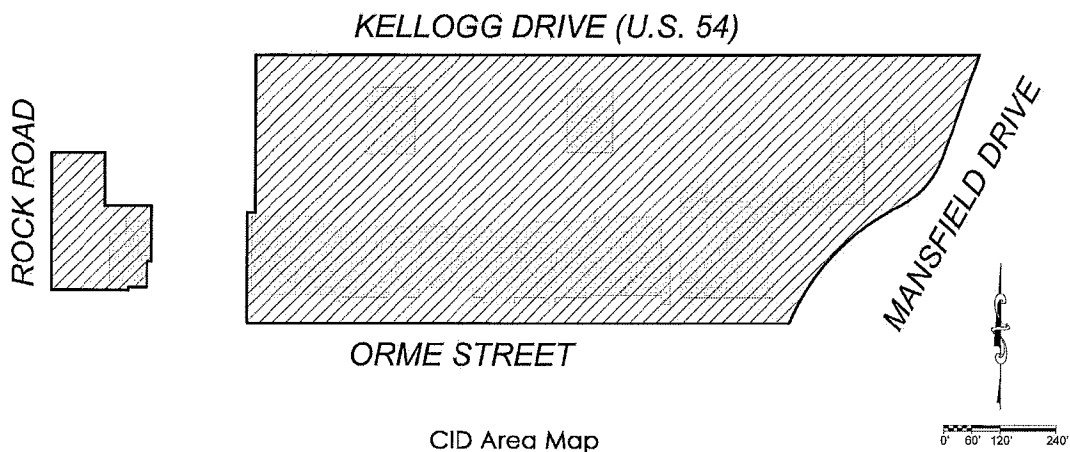
Print Name: Ruth A. Glaze



**Exhibit A-1**  
**Legal Description of District**

Lots 2 and 4, Block 1; Sharon Ryan Addition to the City of Wichita, Sedgwick County, Kansas.

Exhibit A-2  
Map of District



**Exhibit A-3**  
**Project Budget**

<b><u>Description</u></b>		<b><u>Cost</u></b>
<b><u>Hard Costs</u></b>		
Real Property Acquisition (Center)	\$	19,300,000
Outlot Acquisition	\$	5,000,000
Roof Improvements	\$	900,000
Façade Improvements	\$	2,800,000
Revised Elevations & Remodeling	\$	3,000,000
Annual Tenant Improvements (20 years)	\$	17,500,000
Landscaping/Site Amenities	\$	275,000
Drives & Parking	\$	1,800,000
Signage	\$	200,000
		<hr/>
Subtotal:	\$	50,775,000
<b><u>Soft Costs</u></b>		
Civil Land Planning	\$	150,000
Legal	\$	125,000
Brokerage/Commissions	\$	250,000
		<hr/>
Subtotal:	\$	525,000
<b><u>Ongoing Expenses</u></b>		
District and Improvement Maintenance	\$	1,200,000
District Services	\$	200,000
Leasing/Marketing/Advertising	\$	450,000
Administrative Costs	\$	300,000
		<hr/>
Subtotal:	\$	2,150,000
Hard Costs:	\$	50,775,000
Soft Costs:	\$	525,000
Ongoing Operating Expenses:	\$	2,150,000
		<hr/>
Total CID Eligible Costs:	\$	53,450,000

**Eastgate Plaza - Wichita, Kansas**  
**Tenant List & Sales (Estimated)**

Space Number	Tenant	Square Ft.	Sales	Sales/Ft.
1	Casual Male	3,984	\$ 996,000	\$ 250.00
2	David's Bridal	6,320	\$ 1,580,000	\$ 250.00
2A	Plato's Closet	4,243	\$ 1,060,750	\$ 250.00
2B	Available	2,457	\$ 491,400	\$ 200.00
3	Available	900	\$ 180,000	\$ 200.00
4	Available	1,088	\$ 217,600	\$ 200.00
5	Available	804	\$ 160,800	\$ 200.00
6, 7, 8	Regency Beauty Institute	6,013	\$ 751,625	\$ 125.00
9	Burlington Coat Factory	50,000	\$ 6,250,000	\$ 125.00
10	Office Max	26,835	\$ 8,050,500	\$ 300.00
11A, 11B, 11C	Available	26,400	\$ 5,280,000	\$ 200.00
12	Famous Footwear	12,105	\$ 2,723,625	\$ 225.00
13	Hancock Fabrics	19,400	\$ 3,880,000	\$ 200.00
14	TJ Maxx	25,700	\$ 6,425,000	\$ 250.00
15	Catherine's	5,500	\$ 1,100,000	\$ 200.00
16	Barnes and Noble	25,670	\$ 7,701,000	\$ 300.00
18	Souper Salad	5,100	\$ 1,275,000	\$ 250.00
18A	H&R Block	1,900	\$ 237,500	\$ 125.00
19	Available	1,724	\$ 344,800	\$ 200.00
20	Eastgate Barber Shop	750	\$ 56,250	\$ 75.00
21	Available	10,446	\$ 2,089,200	\$ 200.00
22	Available	1,109	\$ 221,800	\$ 200.00
23	Suite Things	1,960	\$ 392,000	\$ 200.00
24	Mattress Firm	4,079	\$ 917,775	\$ 225.00
25	Eyeglass World	4,500	\$ 900,000	\$ 200.00
26	Hobby Town USA	4,449	\$ 889,800	\$ 200.00
27	Tsubasa	1,678	\$ 125,850	\$ 75.00

**Total:** 255,114 \$ 54,298,275 \$ 212.84

**Eastgate Plaza - Wichita, Kansas  
Community Improvement District Proforma**

Sales Assumptions		
Annual Sales	\$	54,298,275
Annual Sales Growth		2%
CID Sales Tax		1.0%

Year	Sales	CID Revenue
1	\$ 54,298,275	\$ 542,983
2	\$ 55,384,241	\$ 553,842
3	\$ 56,491,925	\$ 564,919
4	\$ 57,621,764	\$ 576,218
5	\$ 58,774,199	\$ 587,742
6	\$ 59,949,683	\$ 599,497
7	\$ 61,148,677	\$ 611,487
8	\$ 62,371,650	\$ 623,717
9	\$ 63,619,083	\$ 636,191
10	\$ 64,891,465	\$ 648,915
11	\$ 66,189,294	\$ 661,893
12	\$ 67,513,080	\$ 675,131
13	\$ 68,863,342	\$ 688,633
14	\$ 70,240,609	\$ 702,406
15	\$ 71,645,421	\$ 716,454
16	\$ 73,078,329	\$ 730,783
17	\$ 74,539,896	\$ 745,399
18	\$ 76,030,694	\$ 760,307
19	\$ 77,551,308	\$ 775,513
20	\$ 79,102,334	\$ 791,023
21	\$ 80,684,380	\$ 806,844
22	\$ 82,298,068	\$ 822,981
TOTAL	\$ 1,482,287,715	\$ 14,822,877

CID Reimbursement Cap	125.00%	\$18,528,596
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## Eastgate Plaza - Wichita, Kansas

### Community Improvement District Project Costs

<u>Description</u>	<u>Cost</u>
<u>Hard Costs</u>	
Real Property Acquisition (Center)	\$ 19,300,000
Outlot Acquisition	\$ 5,000,000
Roof Improvements	\$ 900,000
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District and Improvement Maintenance	\$ 1,200,000
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Administrative Costs	\$ 300,000
Subtotal:	\$ 2,150,000
Hard Costs:	\$ 50,775,000
Soft Costs:	\$ 525,000
Ongoing Operating Expenses:	\$ 2,150,000
Total CID Eligible Costs:	\$ 53,450,000

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** CON2010-00008 – Request for a Conditional Use to allow a Wrecking/Salvage Yard on property located at the southwest corner of 29th Street North and Mead Street. (District VI)

**INITIATED BY:** Metropolitan Area Planning Department

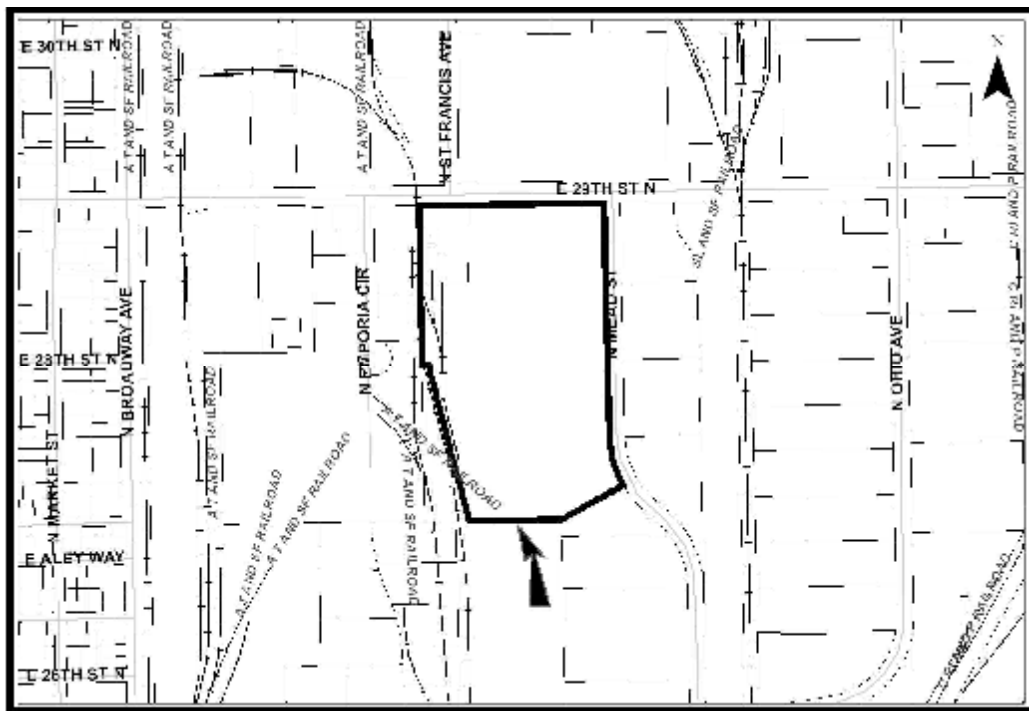
**AGENDA:** Planning (Non-Consent)

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**MAPC Recommendations:** Approve, subject to amended staff conditions (6-5, 8-1 and 9-1).

**MAPD Staff Recommendations:** Approve, with conditions.

**DAB VI Recommendation:** Deny (5-0); Approve, with amended staff conditions (4-3).



**Background:** This application was originally heard by District Advisory Board (“DAB”) VI on March 17, 2010, when they recommended denial (first DAB hearing). The Metropolitan Area Planning Commission (“MAPC”) reviewed the request on March 18, 2010, and recommended approval (first MAPC hearing). On June 15, 2010, the Wichita City Council (“WCC”) heard the request (first WCC hearing) and returned the application to both DAB VI and the MAPC for additional consideration. DAB VI reheard the request on August 18, 2010, and reversed their initial recommendation of denial when they recommended approval (second DAB hearing). The MAPC reheard this application on August 19, 2010, and upheld their previous recommendations of approval (second MAPC hearing). The application was presented to the WCC on September 21, 2010, and again on October 19, 2010 (second and third WCC hearings), where both times the applicant requested the hearing be deferred until all Council members could be present. The WCC granted both deferral requests. All WCC members were present on November 2, 2010 (fourth WCC hearing), at which time the WCC voted to return the application to the MAPC. The MAPC heard the application on January 6, 2011, and recommended approval (third MAPC hearing). The application is now before the WCC for final action.

The application area is located at the southwest corner of 29<sup>th</sup> Street North and Mead Street and is zoned GI General Industrial (“GI”). The applicant, Midwest Scrap Management, Inc., is seeking a Conditional Use to permit “wrecking/salvage yard.” Initially, the application area included the entire 25.68-acre site; however, the application area has been reduced to only that part of the site (approximately 13.2 acres) located south of the existing office building except the northern portion may be used for traffic circulation to permit trucks to enter the site from 29<sup>th</sup> Street North. The southern side of the existing office building is located approximately 586 feet south of 29<sup>th</sup> Street North, and, except for traffic circulation, activities permitted by the proposed Conditional Use will not be permitted in the northern approximately 586 feet of the applicant’s ownership.

Midwest Scrap Management, Inc. intends to operate a metal and scrap salvaging, sorting and shredding operation. Material will be brought in primarily by truck; however, processed material is primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 60 on busier days. Access to the site will be from 29<sup>th</sup> Street North; access from Mead will be prohibited, except for emergency vehicles. Scrap piles may reach 35 feet in height. The applicants do not part-out vehicles. Inoperable vehicles located on-site will be shredded into “fist-sized” pieces. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines “wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof. A wrecking/salvage yard is allowed by Conditional Use permit in the LI Limited Industrial (“LI”) and GI districts and is allowed by right in the Air Force Base (“AFB”) District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent of the area of such fence. With respect to the requirement that the use not abut an arterial street, Planning staff has been advised by the Office of Central Inspection that as long as the use is located at least 150 from arterial street right-of-way, it is considered to not be abutting. The existing chain-link fence depicted on the submitted site plan does not meet the opacity requirement mentioned above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: “Screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood.”

All surrounding property is zoned GI and is used for a variety of industrial uses including: warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing, and salvage and wrecking. Glickman Metal Recycling is located just west of the application area and contains significant piles of scrap metal.

In response to the concerns expressed at the initial DAB VI and MAPC meetings, the applicant has modified the proposal by offering enhanced screening, reduced the size of the area to be used for wrecking and salvage and agreed to prohibit the Mead Street entrance from being used by wrecking and salvage trucks. The MAPC, DAB VI and members of the Bridgeport Area Business Association (BABA) have seen the modified proposal. The applicant's enhanced proposal is to construct a six to eight-foot berm that would be topped with an eight-foot tall masonry wall. Combined the berm and masonry wall would create a 14 to 16-foot tall screen that should effectively screen from view along Mead Street and 29<sup>th</sup> Street North scrap piles up to approximately 75 feet in height. The screening is proposed to be located along the southern property line, beginning adjacent to the northern end of the grain elevator, then east to Mead Street, then north along Mead to the entrance on Mead, then west along the southern side of the driveway into the proposed facility. The berm and wall would then resume on the north side of the Mead Street driveway, then run north to 29<sup>th</sup> Street North and then west along 29<sup>th</sup> Street to the corner of the main driveway serving the parking lot to be located east of the main office building. In the event that the existing building is removed, the applicant agreed to install berms and screening walls similar to previously described along the north line of the reduced application area. The screening is proposed to be further enhanced by the addition of trees or shrubs.

**Analysis:** District Advisory Board ("DAB") VI heard this request the first time at their March 17, 2010, meeting. The DAB voted (5-0) to deny the request. Eight property owners spoke in opposition, many of them referencing an association with the Bridgeport Area Business Association. The property owners' opposition centered on the argument that the businesses that they run are primarily indoor activities that do not involve the outdoor processing or storage of materials like those that are typically associated with a wrecking and salvage yard. The speakers asserted that they have made significant investments in higher quality facilities than are found in a typical industrial area, and approval of the requested use will devalue their investments. Some of the protesters referred to their area as an "industrial park" as a way to contrast their ownerships with the proposed project. It is their contention that a wrecking and salvage yard will bring visual blight; that the screening offered will not hide the scrap piles; traffic will increase and the potential for explosions and air and ground pollution will also increase.

DAB VI heard this request a second time on August 18, 2010, and they voted (4-3) to recommend approval. Seven members of the public spoke in opposition; three spoke in favor. People who spoke in opposition cited arguments similar to those made at the earlier DAB meeting. The people speaking in support noted that wrecking and salvage is an activity that is essential to Wichita; recycling is an essential business and the location is the appropriate site. (See the attached March 17, 2010, and August 19, 2010, DAB VI memos and opposition letters.)

Initially, the MAPC heard this request at their March 18, 2010, meeting. Approximately, the same number of folks that spoke in opposition at the DAB VI meeting also spoke in opposition at MAPC, citing concerns similar to those expressed at the DAB meeting. The MAPC voted (6-5) to approve the request subject to conditions.

The MAPC heard the application for a second time on August 19, 2010. As at the previous meetings, a similar number of people spoke in opposition citing concerns similar to those presented at previous meetings. There were also speakers in support of the application repeating comments similar to those made at the second DAB VI meeting. The MAPC voted (8-1) to recommend approval, subject to amended conditions that were agreed to by the applicant.

The MAPC heard the application for the third time on January 6, 2011. As at the previous meetings, individuals were present to speak in opposition citing reasons similar to those presented at the original meeting. The MAPC voted 9-1 to recommend approval to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials on the approximately 13.2 acres located 586 feet south of 29<sup>th</sup> Street's southern right-of-way. Recycling, salvage or wrecking

activity, except traffic circulation, is not permitted within 586 feet of 29<sup>th</sup> Street's southern right-of-way (or north of the south elevation of the existing principal building).

2. Screening walls shall consist of landscaping, and a combination of earthen berms and masonry walls with a total height of 14 feet. Landscaping, berms and walls shall be installed as shown on the color site plan submitted by the applicant dated 4-6-09. Except for deviations listed in this Conditional Use, screening shall comply with Unified Zoning Code, Sec. IV-B.3.h. The use of large rectangular concrete blocks as screening or fencing material is prohibited. In the event that the existing building is removed, screening as described above shall be installed along the north line of the area where wrecking and salvage operations are permitted.
3. Unless modified by this Conditional Use, the site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.
4. Access is restricted to 29<sup>th</sup> Street North. Except for emergency access, access to Mead Street is prohibited. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection. Materials stored outside shall not exceed 35 feet in height.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.

14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

A 47.08 percent protest has been registered, triggering a three-fourths vote requirement by the governing body to approve the request. (Since this request was returned to the MAPC, the two-thirds vote requirement normally required to override the MAPC's recommendation has been eliminated.)

**Financial Considerations:** There are not any financial considerations.

**Goal Impact:** If approved, the project would support the City's goal to Promote Economic Vitality and Affordable Living.

**Legal Considerations:** The resolution has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:**

1. Concur with the findings of the MAPC, approve the Conditional Use, subject to the recommended conditions and authorize the Mayor to sign the resolution (requires a three-fourths majority); or
2. Deny the Conditional Use request by making alternative findings, and override the MAPC's recommendation (requires simple majority).

**Attachments:** Resolution, two protest maps, three site plans, March 18, 2010, August 19, 2010, and January 6, 2011, MAPC minutes, March 17 and August 19 DAB VI minutes, an e-mail and letter with attached map.

RESOLUTION No. 11-025

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO ALLOW A WRECKING AND SALVAGE YARD ON A PORTION OF THE 25.68 ACRES ZONED GI GENERAL INDUSTRIAL ("GI"), GENERALLY LOCATED ON THE SOUTHWEST CORNER OF 21<sup>ST</sup> STREET NORTH AND MEADE AVENUE, IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 48-451, AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS:

**SECTION 1.** That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, permit a wrecking and salvage yard on a portion of the 25.68 acres zoned GI General Industrial, legally described below:

**Case No. CON2010-00008**

Lot 1, Block 1, North Industrial Park Addition to Sedgwick County, Kansas, except the north 586.00 feet, generally located on the southwest corner of 21<sup>st</sup> Street North and Meade Avenue.

**SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials on the approximately 13.2 acres located 586 feet south of 29<sup>th</sup> Street's southern right-of-way. Recycling, salvage or wrecking activity, except traffic circulation, is not permitted within 586 feet of 29<sup>th</sup> Street's southern right-of-way (or north of the south elevation of the existing principal building).
2. Screening walls shall consist of landscaping, and a combination of earthen berms and masonry walls with a total height of 14 feet. Landscaping, berms and walls shall be installed as shown on the color site plan submitted by the applicant dated 4-6-09. Except for deviations listed in this Conditional Use, screening shall comply with Unified Zoning Code, Sec. IV-B.3.h. The use of large rectangular concrete blocks as screening or fencing material is prohibited. In the event that the existing building is removed, screening as described above shall be installed along the north line of the area where wrecking and salvage operations are permitted.
3. Unless modified by this Conditional Use, the site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.
4. Access is restricted to 29<sup>th</sup> Street North. Use of Mead Street is prohibited for Wrecking and Salvage activities. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection. Materials stored outside shall not exceed 35 feet in height.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner,

including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.

8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

**SECTION 2.** That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

**SECTION 3.** That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date, February 8, 2011.

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Carl Brewer, Mayor

**ATTEST:**

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Karen Sublett, City Clerk

Approved as to form:

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Gary E. Rebenstorf, City Attorney







29TH STREET N.

PARKING

MEAD AVENUE

SCALE

EXISTING CONCRETE

OPERATIONAL AREA

SHREDDER

OPERATIONAL AREA

OPERATIONAL AREA

EXISTING 8-FOOT FENCE

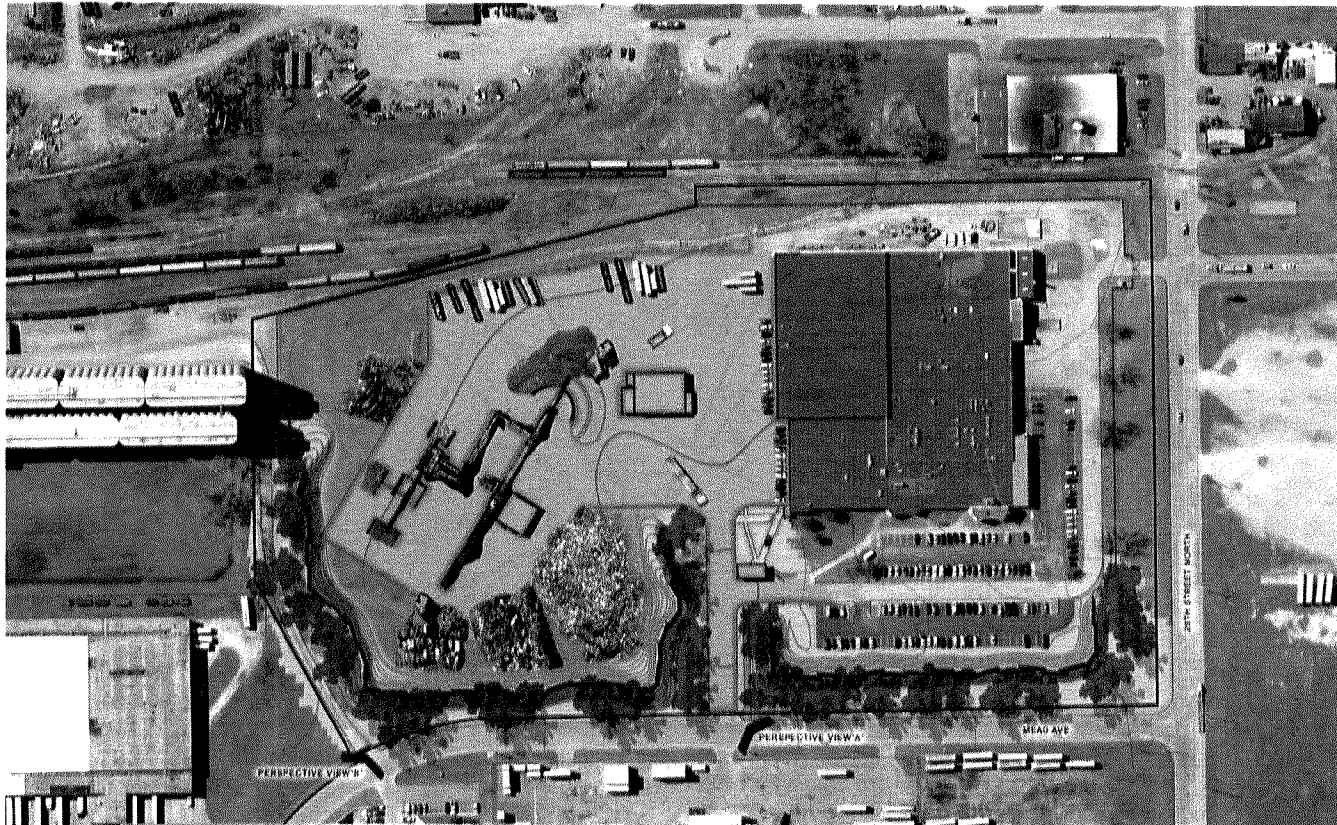
EXISTING 8-FOOT FENCE

EXISTING 8-FOOT FENCE

CON 2010-??



# SITE PLAN - CON2010-?? MIDWEST SCRAP MANAGEMENT



**PROPOSED METAL RECYCLING FACILITY**  
**MASTER PLAN - 2010**



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WICHITA, KANSAS





## EXCERPT MINUTES OF THE JANUARY 6, 2011 METROPOLITAN AREA PLANNING COMMISSION HEARING

**Case No.: CON2010-08** – Midwest Scrap Management, Inc. and Robert Kaplan request a City Conditional Use permit for a wrecking and salvage operation.

Lot 1 except beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; thence West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas.

AND

Beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas.

**BACKGROUND:** This application was originally heard by District Advisory Board (“DAB”) VI on March 17, 2010, (deny); by the Metropolitan Area Planning Commission (“MAPC”) March 18, 2010, (approval) and on June 15, 2010, by the Wichita City Council (“WCC”). On June 15<sup>th</sup> the action of the WCC was to return the application to both DAB VI and MAPC for additional consideration. DAB VI reheard the request on August 18, 2010, and reversed their initial recommendation of denial recommendation by recommending approval. The Metropolitan Area Planning Commission (“MAPC”) reheard this application on August 19, 2010, and upheld their original recommendation of approval. The WCC reconsidered this application on September 21, 2010, and October 19, 2010, where the applicant requested to defer the hearing until all Council members are present. The WCC granted both requests. All WCC members were present on October 19, 2010, at which time the WCC voted to return the application to the MAPC for a third hearing.

In comparison to the original report, the “background” section and the conditions of approval contained in this report have been amended to reflect modifications made at the various meetings.

The application area is located at the southwest corner of North 29<sup>th</sup> Street East and North Mead Avenue, and is zoned GI General Industrial (“GI”). Midwest Scrap Management, Inc. intends to convert the property into a metal and scrap salvaging, sorting and shredding operation. The applicant was originally seeking a Conditional Use to permit “wrecking and salvage” on the entire 25.68-acre site that is developed with an office building. However, the area where scrap material will be deposited, sorted, shredded, stored and shipped has been reduced to the southernmost 12.4 acres; the area located south of the existing building’s southern facade. The northern 13.28 acres that contains the existing building and associated parking field would be allowed to be used for ingress and egress for the scrap operation as the applicant has agreed to limit access to the site from 29<sup>th</sup> Street only. Scrap trucks would be prohibited from using Mead Street. Material will be brought in primarily by truck; however processed material is to be primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day, and up to 60 on a busier day. Scrap piles may reach 35 feet in height. The applicant’s do not part-out vehicles. Inoperable vehicles located on-site will be shredded. Shredded material ends up in “fist-sized” pieces. The application area has one access point each to 29<sup>th</sup> Street and to Mead. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

Other modifications the applicant has made in an effort to address concerns identified during the various meetings include the installation of a six to eight-foot berm that would be topped with an eight-foot tall masonry wall. Combined the berm and wall would create a 14 to 16-foot tall screen that should effectively screen from view along Mead Street and 29<sup>th</sup> Street scrap piles up to approximately 75 feet.

The screening is proposed to be located along the southern property line, beginning adjacent to the northern end of the grain elevator, then east to Mead Street, then north along Mead to the entrance on Mead, then west along the southern side of the driveway to the proposed facility. The berm and wall would then resume on the north side of the Mead Street driveway, then run north to 29<sup>th</sup> Street North and then west along 29<sup>th</sup> Street to the corner of the main driveway serving the parking lot to be located to the east of the main office building. The screening is proposed to be further enhanced by the addition of trees and shrubs.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines “wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof. A wrecking and salvage yard is allowed by Conditional Use permit in the LI Limited Industrial (“LI”) and GI districts, and allowed by right in the Air Force Base (“AFB”) District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent the area of such fence. With respect to the requirement that the use not abut an arterial street, planning staff has been advised by the Office Central Inspection that as long as the use is located at least 150’ from arterial street right-of-way it is considered to not be abutting. The existing chain-link fence depicted on the submitted site plan does not meet the opacity requirement mentioned above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood. In the past, staff has received complaints regarding the use of large rectangular concrete blocks as screening material. It is recommended that such fencing material be prohibited from meeting the screening requirement.

Surrounding property is all zoned GI, and is used for a variety of industrial uses including warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing, and salvage and wrecking. Glickman Metal Recycling is located just east of the application area, and contains significant piles of scrap metal.

Neighborhood opposition has been present from the start of this application. Members of the Bridgeport Area Business Association (“BABA”) were among some the most consistent expressing opposition. BABA is an association comprised of property and business owners located primarily north of 29<sup>th</sup> Street, west of I-135, east of Broadway and approximately I-235 on the north. BABA’s opposition centered on the argument that the businesses they run are primarily indoor activities that do not involve the outdoor processing or storage of materials similar to those that are typically associated with a wrecking and salvage yard. The speakers asserted that they have made significant investments in higher quality facilities than are typically found in industrial areas, and approval of the requested use will devalue their investments. Some of the protestors referred to their area as an “industrial park” as a way to contrast their activities with the proposed project. It is the protestor’s contention that a wrecking and salvage yard will bring visual blight; that the screening offered will not hide the scrap piles; traffic will increase and the potential for explosions, air and water pollution will also increase. A 47.08 percent protest has been registered.

The application also drew speakers who were supportive. Supporters of the application stated that wrecking and salvage is an essential part of the community’s business cycle; recycling is important to the successful operation of Wichita’s commercial and manufacturing companies. It was also the supporter’s contention, given the area’s historical and existing uses and GI zoning, that this site is an appropriate location for wrecking and salvage.

**CASE HISTORY:** The site appears to have been zoned heavy industrial in 1958, and was platted as the North Industrial Park Addition in June 1972.

**ADJACENT ZONING AND LAND USE:**

NORTH: GI General Industrial; elevator, manufacturing  
SOUTH: GI General Industrial; grain elevator  
EAST: GI General Industrial; outside storage of semi-truck trailers and mobile home-type trailers, warehousing  
WEST: GI General Industrial; outside metal recycling; steel fabricating

**PUBLIC SERVICES:** 29<sup>th</sup> Street is a paved four-lane arterial with approximately 50 feet of half-street right-of-way. Mead is a paved two-lane street with 35 feet of half-street right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for “employment / industry center.” Employment / industry centers encompass areas with uses that constitute center or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code (“UZC”), except for the Air Force Base (“AFB”) district.

The application area is still subject to the amended November 27, 1972, General Urban Renewal Plan. The General Land Use Plan map of that document depicts this site as appropriate for “heavy manufacturing” that is a category of industries which are apt to have an extensive impact on the surrounding area. Included are heavy assembly and fabrication uses which may create considerable traffic volume, noise, dust, odor, blast and smoke. Floor area to lot area ratio shall not exceed 3.00 with maximum lot coverage limited to a maximum of 50 percent. As currently developed the site complies with these development standards.

The January 4, 2005, 21<sup>st</sup> Street North Corridor Revitalization Plan’s Preferred 20+ Land Use Plan depicts the site as appropriate for “general industrial” uses, that acknowledges the importance of heavy industry in the Wichita region and specifically the importance of rail dependent uses in the plan area. Rail dependent and heavy industrial uses are allowed in this category. Light industrial uses are also allowed.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials on the approximately 12.4 acres located 586 feet south of 29<sup>th</sup> Street’s southern right-of-way. Recycling, salvage or wrecking activity, except traffic circulation, is not permitted within 586 feet of 29<sup>th</sup> Street’s southern right-of-way (or north of the south elevation of the existing principal building).
2. Screening walls shall consist of landscaping, and a combination of earthen berms and masonry walls with a total height of 14 feet. Landscaping, berms and walls shall be installed as shown on the color site plan submitted by the applicant dated 4-6-09. Except for deviations listed in this Conditional Use, screening shall comply with Unified Zoning Code, Sec. IV-B.3.h. The use of large rectangular concrete blocks as screening or fencing material is prohibited.



3. Unless modified by this Conditional Use, the site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.
4. Access is restricted to 29<sup>th</sup> Street North. Except for emergency access, access to Mead Street is prohibited. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection. Materials stored outside shall not exceed 35 feet in height.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.

15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned GI General Industrial, and is used for industrial activities ranging from outside storage of trailers, warehousing, manufacturing, steel fabricating or wrecking and salvage. The wrecking and salvage operation has extensive piles of scrap.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned GI General Industrial which permits a very wide range of commercial, office and industrial uses. The site is developed with an office building and has some room for additional building. The site could be used as currently zoned; however, there has been increasing interest in wrecking and salvage, as demonstrated by two recent development applications within the vicinity of this application, and city-wide there have been a total of 10 requests in the last two years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval are designed to minimize foreseen impacts to nearby property owners.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide another location for the disposal of scrap material. Denial would presumably present the prospective purchaser with delays that could result in a loss of income and business opportunity.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is in conformance with adopted plans as described in the conformance with plans and policies section located above.
6. Impact of the proposed development on community facilities: Existing community facilities are in place to address anticipated demand on community facilities. Truck traffic would potentially increase but the streets in the area were developed to accommodate industrial traffic.
7. Neighborhood support or opposition: As indicated above, a 47.08 percent protest has been registered and there has been support.

**DALE MILLER**, Planning Staff presented the Staff Report.

**MCKAY** asked if the 47% protest was all located within 200 feet of the site.

**MILLER** responded yes.

**MCKAY** suggested since this was the third time this item has been heard by the Commission that no additional time, other than the required 5 minutes per person, be granted for public comment.

**BOB KAPLAN, AGENT FOR MIDWEST SCRAP MANAGEMENT, INC.** commented that the Planning Commission knows this case because they have heard it twice and approved it twice. He clarified that the case did not come back from City Council because they disagreed with the Planning

Commission's recommendation, but because of the percentage of protests, it required 6 affirmative votes for approval of the application. There were insufficient votes to deny or approve the application. He commented that a majority of the protest was from Mr. Glickman who owns the only shredder in town and wants to keep it that way. He said this area is about the only area in town that will accommodate this use. He listed 15 reasons, including, but not limited to: The site will use approximately \$1,000,000 annually in electricity to be provided by Westar through a dedicated line; the operation needs substantial rail and the 29<sup>th</sup> and Mead location has that and adequate spur track; the operation will not impair anyone else's use of rail in the area; the site has easy access to I-35 and 81 Highway; there is no residential use in the neighborhood; the whole area is industrial and heavy industrial and has been for years. He said a conditional use permit is still needed for this type of operation. He added that the applicant looked for years to find this site. He concluded by stating that DAB VI also recommended approval of the application. He said they realize this is not an easy thing to locate, but reiterated "if not here, where?" He listed several recycling businesses currently operating in the area. He said the applicant has made major concessions such as reducing the requested operational area by 50%; recirculation of their own water so that no waste water goes into the storm sewer or sanitary sewer systems; and providing landscaping including a berm, masonry wall, shrubs, trees and grass. In addition, the applicant has accepted every condition in the Staff Report. He concluded by asking the Planning Commission to once again approve the application.

**NICK STAIB, WDM ARCHITECTS** reviewed several drawings and maps of the property with the imposed graphics of the 6-8 foot berm, 8-foot wall and landscape of trees, shrubs and grass. He said it will blend in so well that people will not be able to see it, he added; however, that from a distance people may be able to see part of the operation.

**KAPLAN** said between the screening, berming, and landscaping, the scrap heap will not be seen from the street.

**MARNELL** asked Mr. Kaplan if his client agreed to the 15 conditions listed in the Staff Report.

**KAPLAN** said yes they absolutely agree to all the conditions listed and have imposed some of their own conditions.

**HILLMAN** said while he appreciated the landscaping, he said he didn't see a whole lot of traffic at ground level; that most of the traffic will be going along I-35, the elevated area of the canal route. He said people coming into Wichita will be able to see the piles of rubble which will make a significant impression and he is concerned about that.

**KAPLAN** said he couldn't tell the Commission if an architectural design would make the area not visible from I-35. He said if it was doable and the Commission made it part of the conditions, they would do it.

**STAIB** said the shade trees will be about 30-40 feet tall once they mature in time. He added that the site is ½ mile away from the interstate.

**HENTZEN** asked if the speakers would let the Commission know where they were located in the red area of the protest map.

**RICK LOWE, 1509 SOUTH SPRING HOLLOW CIRCLE, PRESIDENT, BRIDGEPORT AREA BUSINESS ASSOCIATION (BABA)** said he would like to note that the first time DAB VI heard this conditional use request they recommended denial. He also noted that the Planning Commission voted for approval 6-5 the first time this case was heard. He mentioned that at that meeting he left with "a bad taste in his mouth" because Commissioner Sherman had asked if he should recuse himself from the

proceedings because he worked for Westar and was advised by legal staff that he could vote on the application. He said Commissioner Sherman voted and that was the deciding vote on the issue. He said when the request came back a second time with the inclusion of the berm and masonry wall, DAB VI did recommend approval and the issue passed the Planning Commission at the second hearing by a wider margin. He said the vast majority of the area inside the protest petition calculation does not belong to Glickman, but adjacent landowners to the east or north. He said he does not think the statement that Glickman is trying to keep a competitor from coming to town is fair. In addition, he said the statement has been made "if not here, where?" and added that they have had several discussions with the applicant about alternate sites. He said to say no other sites are available is not true; there are sites in General Industrial zoning with rail access and access to I-35 within 2 miles of this location, but the applicant owns this site. He said any of those sites would be better from a public policy perspective. He concluded by asking why would the City spend millions of dollars to clean up scrap yards on 21st Street and then place a scrap yard on 29<sup>th</sup> Street.

**MIKE BOYD, PARNTER, GODSEND LP, 2822 NORTH MEAD** commented that you can see his building from I-35 because you can count the skylights on top of it so a 35-foot stack of metal directly across the street will also be visible from I-35.

**TOM OLSEN, EXECUTIVE VICE PRESIDENT, HOC INDUSTRIES, 3511 NORTH OHIO** said he was present to represent himself and Bill and Jennifer Nath, the largest land owners in the Bridgeport area who own 2888 N. Mead and have filed a formal protest on this application. He said this use will make property values in the area go down. He said one of the largest employers in the Bridgeport area Johnson Controls located just north of the site is opposed to this use. He said wrecking and salvage operations create blight regardless of the number of trees that are planted. He said you can go on-line and see pictures of the applicant's property in Kansas City. He suggested the Planning Commissioners check it out. In addition, he said the applicant has had a number of safety infractions, fires and violations of Kansas Department of Transportation (KDOT) regulations at that location. He said businesses in the Bridgeport area have invested millions of dollar in their property in the last 29 years. He said they have been at their North Ohio address since 1987 and have invested millions of dollars in their location. He mentioned that Johnson Controls who employs over 1,200 people signed the protective overlay petition to keep these types of processes out of the area. He said this operation simply does not fit in the area and he respectfully requested that the City deny the application.

**DENISE FERBER, MORRIS COLLECTIONS, INC. 128 N. DELLROSE, (PROPERTY OWNERS OF 330 NORTH OHIO)** said she has talked about the decrease in property values in the past. She said she wanted to talk about the rail study and how rail car switching will impact the area. She said there are many businesses with many employees traveling 29<sup>th</sup> Street on a daily basis. In addition, she said the original Staff Report estimated between 20-30 trucks a day arriving/leaving the site; however, the applicant has stated that it may be up to 60 trucks a day which will have a dramatic impact on streets in the area. She questioned the applicant's safety record at their operation in Missouri and cited transportation violations and safety issues with projectiles caused by these large shredding machines. She said she believes the applicants voluntarily reducing the size of the area is a ploy and that they will utilize the north area of the site for a use not yet disclosed. She asked if the Commission could require the applicant to provide a buffer to the north if the building is torn down in the future.

**LOUIS EFTINK, 1330 EAST 27<sup>TH</sup> STREET NORTH** said he was present to speak in opposition to the proposed use because he does not believe it fits into the area. He said 70% of York International employees leave the area using 29<sup>th</sup> Street, which is congested with truck and rail traffic now. This proposed use will only make the situation worse. He said the Cargill sign, which can be seen from I-35, is not as high as the piles of trash that will be allowed with this use. He said this is not adding any beauty to Wichita as people come in from the north side of the City.

**JOHNSON** (Out @3:15 p.m.)

**JOHN PRATHER, 1224 WEST 6<sup>TH</sup> STREET, EL DORADO, KS, VICE PRESIDENT CORPORATE RELATIONS, GROENDYKE TRANSPORTATION, INC, 3550 NORTH OHIO STREET** said they are in opposition to this variance. He said Groendyke spent over a decade planning the move of their transportation business to the Bridgeport area. He referred to a City Planning document (brochure) that encouraged businesses to relocate to the area. He said they are around like neighbors with compatible uses and based their investment decision on the planning issues. He said this is not about the permit for a conditional use; it is about compatible traffic and infrastructure associated with businesses in the area. He said BABA was formed to deal with traffic issues on Ohio and preservation of future property values. He said the group is about helping out neighbors and maintaining safety on public thoroughfares in the area. He said at the time BABA was formed 29<sup>th</sup> Street and Ohio was extremely hazardous because of traffic patterns in the area. He said as a result of BABA's efforts, traffic control devices were installed and that the signals were a very important safety measure. He said that feeling of success and accomplishing something together as neighbors is what BABA is about. He said they are concerned about compatibility of this proposed use and preserving City property taxes in the area, preservation of property values and employee safety and security. He said he doesn't see how this use will improve or add to any of the items he just mentioned; therefore, they are opposed to the application.

**HENTZEN** (Out @3:20 p.m.)

**JOHN C. WADSWORTH, PRESIDENT AND OWNER, PIPING & EQUIPMENT COMPANY, INC. 1111 EAST 37<sup>TH</sup> STREET NORTH.** He said his company is a 65 year old mechanical contractor who has been located in the Bridgeport area for 65 years. He said in 2010, he issued 620 W-2 forms and provided over \$12,000,000 in payroll to his employees.

**WADSWORTH** said he was present as a concerned citizen and a 50 year resident of Wichita who has a substantial investment in the Bridgeport area, his company, and his employees. He said he has observed the development of the Bridgeport area into a first class industrial park. He said it is an area where construction, transportation, service and manufacturing companies have migrated due to the unique characteristics of the area. He said it is a great area for employment and industrial companies and is zoned General Industrial. He said there are many valuable businesses in the area employing well over 10,000 employees. He said he understood the need for heavy industrial zoning and why conditional use permits are required for certain business operations.

**WADSWORTH** mentioned several City Ordinance violations in the area including Andale Concrete Trucks using jake brakes within the City limits; the mountains of concrete and asphalt that Cornejo and Andale Concrete have dumped along Ohio Street for use in their paving operation, which requires a conditional use permit which he understands has not been approved, but the business goes on. He said he used to sell his industrial scrap iron to Axis Metal for them to sell as scrap iron until he found out they were operating without a conditional use permit.

**WADSWORTH** asked the Planning Commission to answer several questions about the proposed conditional use including: what kind of machine will be used to shred the scrap metal; who is the manufacturer; what is the size of the machine; what is the noise level when the machine is in operation; how does the machine prevent projectiles from being thrown when they are shredded; what happens when a propane bottle is in the vehicle being shredded; how many trucks will enter the site each day; what is the impact to the traffic along 29<sup>th</sup> Street; what is the traffic pattern for all trucks to enter the site; how will the applicant manage their trucking fleet different than their Kansas City operation which had 72 KDOT inspections of their trucks in a 2-year period resulting in 40 out of service violations; how will the

applicant manage this operation differently than their operation in St. Joseph, Missouri which had so many fires (7 major fires in a 4-year period) that the Fire chief asked to shut down the business; what happens to emergency responders when there is a fire and 29<sup>th</sup> Street is blocked by rail cars; what is the applicant's plan to dispose of tires and gas tanks, which they have indicated cars to be shredded will not include; how many rail cars a day will enter and leave the site; when will the switching occur; how long will 29<sup>th</sup> Street be blocked with rail cars.

**MOTION:** To grant the speaker 1 additional minute.

**HILLMAN** moved, **FARNEY** seconded the motion, and it carried (10-0).

He asked how Commissioners can vote on this issue if they cannot answer the following questions: How can they vote on this Conditional Use permit without accurate information; make a decision that this application fits the uses and character of the neighborhood; indicate the application does not detrimentally affect nearby property; determine the application does not impact public health, safety, and welfare; vote on the application with staff recommendations that are basically unenforceable; vote on the application when a majority of the surrounding property owners and businesses in the area oppose the application; vote on the application when the Staff Report is inaccurate due to information provided by the applicant and lack of understanding of the business and their operations and their performance at their other facilities. He concluded by saying that he believed it was up to the Planning Commission to make an informed and educated decision while following the "Golden Rules" and the Ordinances of the City. He said he didn't understand how any of the Planning Commission could vote on this application.

**KAPLAN** briefly reviewed the history of the case including the fact that the conditional use had been to DAB VI and the City Council twice. He said there has been much supposition and speculation as to where the applicant ought to locate their operation by people who know nothing of the criteria and requirements for this type of operation. He said the objections of neighboring owners are one factor to consider during deliberations on the merits of the application, not a basis for denial of anything. He said the neighbors are not experts in land use. He said the Planning Commission has heard the material before and he would answer any and all questions. He briefly reviewed the proposed screening, masonry wall, berm, shrubs, trees and grass. He said this will develop 50 permanent jobs for the area, as well as several hundred temporary jobs during the construction phase of the project. He said no truck traffic will be allowed on Mead, and added that this is a 25 acre property that will generate traffic no matter what is located at the site. He introduced Nick Hayes, Midwest Scrap Management, who will be managing the site and was also present to answer questions.

**FOSTER** asked if keeping the building at the site was in the conditions.

**MILLER** said there was no specific condition for that and it was stated in the applicant/agent's testimony that the building would remain as a buffer to the north.

**FOSTER** asked if staff could add a condition that the building stay in place or if it is demolished, that the applicant be required to provide the same type of screening as the screening on the east side of the site.

**KAPLAN** commented that the applicant intends to do that.

**HILLMAN** said he seemed to recall that the applicant indicated they would use the building for materials storage.

**FOSTER** asked if 29<sup>th</sup> Street was considered a minor arterial.

**MILLER** said 29<sup>th</sup> Street is an arterial street.

**HILLMAN** asked how many exits from the property.

**MILLER** said one exit onto 29<sup>th</sup> Street and mentioned that it was agreed that trucks would not use Mead Street.

**MOTION:** To approve subject to staff recommendation and add language to condition #2 to the effect that if the building is removed from the front part of the property, that area will need to be bermed and landscaped with appropriate screening similar to the east side of the site.

**MARNELL** moved, **KLAUSMEYER** seconded the motion.

**HILLMAN** said unless one of the speakers is interested in buying back the property and developing it in some other manner, he said he would have to support the motion. He said it is a shame to have salvage in this area but at one time this was the outermost part of the City and a City as developed as Wichita needs a number of salvage operations. He said sometimes long-term planning is not always able to address all issues that will arise.

**FOSTER** said this is a tough decision but he believes the applicant has made efforts to address the impact on the neighborhood with the fence, berming and other landscape items.

**MOTION CARRIED 9-1. MCKAY – No.**

## EXCERPT OF THE MARCH 18, 2010 MAPC HEARING

**Case No.: CON2010-08** - Cargill Meat Solutions Corporation (property owner), Midwest Scrap Management, Inc. (prospective purchaser) / Robert Kaplan (agent) requests a City Conditional Use to permit wrecking and salvage on property described as:

Lot 1 except beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; thence West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas.

AND

Beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas. Generally located at the southwest corner of 29th Street North and North Mead Avenue (2901 N. Mead).

**BACKGROUND:** The application area is located at the southwest corner of north 29<sup>th</sup> Street and Meade Street, and is zoned GI General Industrial (“GI”). The applicant is seeking a Conditional Use to permit “wrecking and salvage” on the 25.68-acre site that is developed with an office building that currently houses Cargill Meat Solutions. The current owner intends to sell the property to Midwest Scrap Management, Inc., who intends to operate a metal and scrap salvaging, sorting and shredding operation. Material will be brought in primarily by truck; however processed material is primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 30 on a busier day. Scrap piles may reach 30 feet in height. The applicant’s do not part-out vehicles. Inoperable vehicles located on-site will be shredded. Shredded material ends up in “fist-sized” pieces. The application area has one access point each to 29<sup>th</sup> Street and to Meade. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines “wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof. A wrecking and salvage yard is allowed by Conditional Use permit in the LI Limited Industrial (“LI”) and GI districts, and allowed by right in the Air Force Base (“AFB”) District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent the area of such fence. With respect to the requirement that the use not abut an arterial street, planning staff has been advised by the Office Central Inspection that as long as the use is located at least 150 from arterial street right-of-way it is considered to not be abutting. The existing chain-link fence depicted on the submitted site plan does not meet the opacity requirement mention above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood. In the past, staff has received complaints regarding the use of large rectangular concrete blocks as screening material. It is recommended that such fencing material be prohibited from meeting the screening requirement.

Surrounding property is all zoned GI, and is used for a variety of industrial uses including warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing, and salvage and wrecking. Glickman Metal Recycling is located just east of the application area, and contains significant piles of scrap metal.



**CASE HISTORY:** The site appears to have been zoned heavy industrial in 1958, and was platted as the North Industrial Park Addition in June 1972.

**ADJACENT ZONING AND LAND USE:**

NORTH:	GI	General Industrial; elevator, manufacturing
SOUTH:	GI	General Industrial; grain elevator
EAST:	GI	General Industrial; outside storage of semi-truck trailers and mobile home-type trailers, warehousing
WEST:	GI	General Industrial; outside metal recycling; steel fabricating

**PUBLIC SERVICES:** 29<sup>th</sup> Street is a paved four-lane arterial with approximately 50 feet of half-street right-of-way. Meade is a paved two-lane street with 35 feet of half-street right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for “employment / industry center.” Employment / industry centers encompass areas with uses that constitute center or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code (“UZC”), except for the Air Force Base (“AFB”) district.

The application area is still subject to the amended November 27, 1972, General Urban Renewal Plan. The General Land Use Plan map of that document depicts this site as appropriate for “heavy manufacturing” that is a category of industries which are apt to have an extensive impact on the surrounding area. Included are heavy assembly and fabrication uses which may create considerable traffic volume, noise, dust, odor, blast and smoke. Floor area to lot area ratio shall not exceed 3.00 with maximum lot coverage limited to a maximum of 50 percent. As currently developed the site complies with these development standards.

The January 4, 2005, 21<sup>st</sup> Street North Corridor Revitalization Plan’s Preferred 20+ Land Use Plan depicts the site as appropriate for “general industrial” uses, that acknowledges the importance of heavy industry in the Wichita region and specifically the importance of rail dependent uses in the plan area. Rail dependent and heavy industrial uses are allowed in this category. Light industrial uses area also allowed.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials. Recycling, salvage or wrecking activity is not permitted within 150 feet of 29<sup>th</sup> Street’s southern right-of-way.
2. Screening walls shall comply with Sec. IV-B.3.h, except that the use of the large rectangular concrete blocks as fencing material is prohibited.
3. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.

4. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material ) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned GI General Industrial, and is used for industrial activities ranging from outside storage of trailers, warehousing, manufacturing, steel fabricating or wrecking and salvage. The wrecking and salvage operation has extensive piles of scrap.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned GI General Industrial which permits a very wide range of commercial, office and industrial uses. The site is developed with an office building and has some room for additional building. The site could be used as currently zoned; however, there has been increasing interest in wrecking and salvage, as demonstrated by two recent development applications within the vicinity of this application, and city-wide there have been a total of 10 requests in the last two years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval are designed to minimize foreseen impacts to nearby property owners.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide another location for the disposal of scrap material. Denial would presumably present the prospective purchaser with delays that could result in a loss of income and business opportunity.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is in conformance with adopted plans as described in the conformance with plans and policies section located above.
6. Impact of the proposed development on community facilities: Existing community facilities are in place to address anticipated demand on community facilities. Truck traffic would potentially increase but the streets in the area were developed to accommodate industrial traffic.

**DALE MILLER**, Planning Staff presented the Staff Report.

He reported that Cargill was not related to this application, it is an application by Midwest Scrap Management, Inc. He said the sale had not been finalized when the ownership list was received from the title company. He reported that eight to nine people spoke in opposition to the proposal at the DAB VI meeting. He said the DAB voted 5-0 to recommend denial of the request. He said he would like to address some of the questions that came up at the DAB meeting in case the same issues come up today. He said the Glickman northern property line is 640 feet from 29<sup>th</sup> Street and he said 29<sup>th</sup> Street is 571 feet from the rear of the existing (formerly Cargill) building at the site. He said another issue that was discussed was the 2005 application located further north of 33<sup>rd</sup> Street on St. Francis which was the Campbell's wrecking and salvage application. He said that case was put on hold by the MAPC while staff developed an amendment to the Unified Zoning Code (UZO) which would have liberalized the recycling processing code. He said that proposed amendment was denied by the MAPC. He said the Campbell's took their case to the City Council who in turn denied their proposal.

**MITCHELL** asked so to the best of staff's knowledge the Campbell operation is still going on.

**MILLER** said yes. He said the original legal use is going on, but they did not get approved for the extra recycling processing they requested. He said how legal the operation is today may be debatable.

**BOB KAPLAN, AGENT FOR THE APPLICANT** introduced **NICK HAYES, MIDWEST SCRAP MANAGEMENT, INC.** who he said will be managing the local facility if the proposal is approved. He showed a short slide presentation of the operation including the proposed sample screening fencing, which was cast concrete. There was also a short slide presentation entitled "Today's Scrap Recycling Industry" by the Institute of Scrap Recycling Industries, Inc.

**KAPLAN** commented that **MR. HAYES** was present to answer any questions regarding the operational aspect of the proposal. He said **RUSS EWY, BAUGHMAN COMPANY, PA.**, was present to speak to the land plan and **GRANT TIDMAN, J.P. WIEGAND**, was present to discuss finding an available site. He said this site they have acquired is appropriate for this type of business because it is in a GI General Industrial zoned district. He said the Bridgeport area permits outright most manufacturing and large industrial uses such as asphalt and concrete plants, gas and fuel storage, landfills, rock crushing operations, transfer stations and wrecking and salvage operations. He said Bridgeport is an industrial area and that is why it is zoned the way it is. He said what they propose is similar to the Glickman Iron and Metal shredder next door, which they feel is the beauty of the site, a similar use already exists in the area. He said they will build screening along 29<sup>th</sup> Street and have no plan to do anything with the building so that will remain as is to buffer and screen to 29<sup>th</sup> Street. He said the operations and shredding will take place on the south side of the site. He said all non-ferrous metal will go inside the warehouse. He said steel will be stored outside. He said GI is the most intensive zoning district. He said this proposed use complies with the 2030 Functional Land Use Guide and also with the 21st Street North Corridor Revitalization Plan. He said the property is attractive because it is already zoned properly and it is next to rail service which is critical to a wrecking/salvage operation. He said all scrap materials are shipped out by rail car. He said there are environmental monitoring wells on site; they have a dust suppression system and they will screen off the shredder. He said they feel all conditions in the Staff Report are appropriate and they will comply. He said they located this property after a two-year search and that Midwest Scrap Management will be investing approximately \$20 million in the operation. He said they operate "state of the art" facilities and referred Commissioners to the booklet distributed as a handout with pictures of the Kansas City operation. He said he understood the neighborhood opposition and the complaint that the storage piles exceed the height of the screening fence, but he said they will have those two objections no matter where they go.

**MOTION:** To give the agent/applicant an additional two minutes.

**HENTZEN** moved, **DOWNING** seconded the motion, and it carried (11-0).

**NICK HAYES, MIDWEST SCRAP MANAGEMENT, INC., 5539 RUSSELL STREET, MISSION, KS** said this will be a "state of the art" shredding operation. He said they will invest \$20 million in the shredder alone in addition to the property, equipment and additional materials they will acquire for the site. He said this site will be built from the ground up and will be environmentally compliant. He said there is ground water monitoring on site and they will use a closed-loop water injection system to keep dust down. He said the closed loop system injects water into the mill where the material is shredded and the system recycles the water. He said the machine will have a screen over the area where material falls. He said they use a product called "Fluff" for trash which is a favorite of local landfills because it provides a top coat which helps with odor control. He said the system they would like to install shreds 300 tons an hour. He said it can shred one car and sort it every 15 seconds. He said all cars will have gas tanks and fluids removed from the cars before shredding. He said they will be generating additional revenue streams for materials, equipment, trucks, etc. to service customers in the area.

**HILLMAN** asked about a fence tall enough to cover and shade materials.

**HAYES** said the piles of material will be right around 30 feet which is what they keep at their current location. He said the material will be piled in the middle of the operation and he didn't know what height would be high enough to cover that. He said the machine processes materials very quickly so the majority of piling will be about the size of a fist and that will be shipped out to be reused. He said they will build a cast concrete fence to the height that is required.

**MARNELL** asked about the existing shredder that has explosions and asked if that was from the gas tanks?

**HAYES** said yes, but they will require that gas tanks be removed before they accept cars at this facility.

**MITCHELL** clarified that **MR. KAPLAN** said the proposal complies with the 2030 Functional Land Use Guide.

**KAPLAN** replied yes sir it does.

**MITCHELL** asked how many employees are anticipated at this operation.

**KAPLAN** said between 30-40 initially, and probably expanding to 50-60 and they will not be minimum salary jobs, but skilled individuals like truck drivers and machine operators, which he said they believe fits the description of "employment industry center."

**KLAUSMEYER** asked for a clarification on the screening.

**KAPLAN** said the fence will be solid cast concrete. He said the UZC requirement is eight feet in height; however, they will take the fence to any reasonable height that the Commission requires.

**RICK LOWE, 1509 SOUTH SPRINGHOLLOW CIRCLE** said he owns and operates a business in Bridgeport and that he was present as President of the Bridgeport Area Business Association (BABA) which was founded in 2007. He said one of the first things the Association did was contact city staff and start working on land use issues just like the type of things that are being discussed today. He commented that the group has a great deal of regard for Planning Staff and their tremendous help with what the Association is trying to do in the Bridgeport area. He said there are several reasons why BABA members object to this proposal. He said he would like to take exception to staff's findings, specifically item #5 on page 4. He said he was not sure if he agreed with the comment that this is in accordance with the Comprehensive Plan, especially the 21<sup>st</sup> Street North Corridor Revitalization Plan. He mentioned a previous case which was CON2005-11, a conditional use for wrecking and salvage that was denied because of the conflict between the proposed use and the 21<sup>st</sup> Street North Corridor Revitalization Plan and added that property was not located on an arterial. He also mentioned item #3 which talked about the extent to which removal of the restrictions will detrimentally affect nearby property. He said the salvage piles can be up to 30 feet high. He said at the company's current operations in Kansas City, (which another speaker has pictures of) the piles look to be considerably taller than that. He said an eight-foot screening fence is not going to do a whole lot to block a 30-foot pile of scrap metal. He said it is impossible to have a 30-foot high pile of metal with only a 150-foot setback from the arterial and not have a detrimental effect on nearby property. He reiterated that DAB VI voted unanimously to deny the request. He referred to the booklet entitled "Bridgeport Area Business Association – Working Together for Business Success" which highlighted the types of businesses that are located in the Bridgeport area. He said although it is a GI zoned area which is the heaviest use in the zoning code, a lot of the businesses in the area are very nice, high quality, very pristine and if this request is approval, it will be very detrimental to the businesses in the area. He mentioned several other businesses that have located to Bridgeport and made multi-million dollar investments in the area.

**MITCHELL** asked for an estimate of the number of employees in the Bridgeport business district.

**LOWE** responded off the cuff between 5,000 – 6,000 people.

**HILLMAN** commented that there were nice businesses in the area that he has visited and done business with and he appreciates what they are trying to do. He said he noticed Glickman, as well as a number of other salvage yards, was not one of their members. He asked if BABA has approached those people.

**LOWE** said yes. He added that BABA refers to itself as the area east of Broadway; west of I-135; south of the Big Ditch; then south of 29<sup>th</sup> Street to 25<sup>th</sup> Street. He said they have members south of 29<sup>th</sup> Street, but Glickman is not on the list because they have not joined BABA. He said Glickman has talked to them about on-going land use issues and cleaning up the area.

**HILLMAN** asked if they have had discussions concerning screening fences or containment of blowing of trash.

**LOWE** responded to date, no they haven't

**HILLMAN** asked if the Commission approves this application, will BABA have interactions with this group.

**LOWE** said that discussion is appropriate for this board to have if the application is approved it is reasonable and prudent for this body to discuss types of restrictions such as the height of the screening and depth of setback. He said he doesn't think the 150-foot setback noted in the report is adequate. He said that would allow the piling of scrap three to four stories tall north of the frontage of the building. He said if the application is approved there is nothing that would keep them from tearing the building down and stacking material up to 29<sup>th</sup> Street.

**LEONARD HICKS, 2230 CARDINAL DRIVE, MEMBER OF BABA** said he owns two buildings in the Bridgeport area. He said he took time to take pictures of Midwest Scrap Management's Kansas City operation, which he referred to in a presentation. He mentioned a conditional use case from 2003 that requested expansion on 21<sup>st</sup> Street east of Broadway and at that time Planning Staff stated expansion of salvage operations in this corridor was a major concern due to the recruitment and retention of industrial businesses. He said he has previously lived in Kansas City and that there was a constant problem with salvaged cars because the salvage yards did not take gas tanks. He said the gas tanks were basically thrown all over the city. He said 135 is an elevated expressway that looks down into this area. He said an eight to ten-foot screening fence is not going to help. He said the gas tanks are a major concern of his. He concluded by stating that Glickman was a non-conforming site that should not be taken into consideration to accept this use. He referred to the picture presentation which showed that most of the piles were over 30 feet tall.

**FARNEY** asked if that location was in the state of Kansas or Missouri.

**HICKS** said Kansas City, MO. in a hidden area so the fencing was not as critical.

**TOM OLSEN, EXECUTIVE VICE PRESIDENT, HOC INDUSTRIES, 3511 NORTH OHIO** said he has worked for HOC Industries for 29 years. He said they moved to Bridgeport in 1997, when there wasn't much up there. He said within the last 10 years millions of dollars have been invested in property in the area including several Fortune 500 companies including Wal-Mart, Family Dollar, Dollar General, Coleman Company, U.S. Department of Defense, Bed Bath and Beyond and many others. He said they

have corporate clients that come to their offices. He said Johnson Controls, who has 1,200 employees, also has corporate clients coming in and they were a major objector to the 2005 application that was eventually rejected by the MAPC. He said they have spent millions of dollars to make a nice business park in this area. He said he understood that there has to be recycling somewhere, but that there were certain things that just do not fit in this area. He said the Planning Department is currently working with BABA to create a "protective overlay" which will give them the opportunity to attract other quality businesses into the area who may employ 500-1,000, and they have the area to do it up there. He said these types of businesses are not going to move into areas that have salvage yards, he can guarantee and in fact, some businesses may move out if this continues to happen. He said once these things are approved it opens "Pandora's Box" for those types of businesses to come in all over the area. He said BABA has made tremendous strides and they would appreciate it if they didn't go backwards. He reiterated that DAB VI recommended denial. He said this business is just not a fit for the business park. He said the Planning Department is currently working on a protective overlay for the area and added that there are several types of businesses they would like to exclude including wrecking and salvage type operations. He said a wrecking and salvage yard is not a "permitted business" in G1 zoning. He said it is only permitted with a conditional use. He said he thought it was kind of arrogant to buy a property and spend that much money knowing you haven't got permission to use it as a wrecking and salvage yard. He referred to map which showed the businesses that are willing to agree to the protective overlay. He said they defined the Bridgeport area as businesses on Meade, 25<sup>th</sup> Street, Ohio and boundaries of Broadway, 135 and 29<sup>th</sup> Street. He said the owner of the company owns a lot of property in the area and they are concerned about the value of their properties falling. He said they have one piece of property directly across the street from this site and they are scared to death that the property will be worth zip if this conditional use is approved. He concluded by asking the Commission to support denying this application.

**MARNELL** asked if the Glickman Salvage operation has been there for an extended period of time?

**OLSEN** said Glickman has been there since they moved in 1987.

**MARNELL** asked about another salvage operation north of 29<sup>th</sup>

**OLSEN** said the only other one he can think of since 1986-87 is the Campbell's, but he said that is very limited but neighbors say they are not abiding by the limitations on which they received the permit.

**MARNELL** asked what type of business was that.

**OLSEN** responded a recycling business but they are not supposed to be doing any industrial recycling.

**MARNELL** asked if he had any idea how long that business has been there?

**OLSEN** said a couple of years.

**MARNELL** commented then it is relatively new, but Glickman has been there a long time.

**OLSEN** said yes it has and been a physical blight to the area for a long time.

**MARNELL** commented so your company still chose to build there anyway?

**OLSEN** said yes they did.

**BOB ALDRICH, VICE PRESIDENT FOR WINDY CITY RAILWAY SERVICES, MEMBER OF BABA** said for the last couple of years BABA has been working with Planning Staff to develop a

protective overlay to limit the type of businesses that are going into the Bridgeport area such as salvage yards, rock crushers and sexually oriented businesses. He said this is a very pristine industrial park area with nice, clean types of businesses. He said a salvage yard will have a detrimental effect on the other businesses in the area. He said these businesses have sunk millions of dollars into their businesses and clean up of the area. He said at one time it wasn't so nice up there. He said these businesses employ 6,000 plus employees. He said this area is literally the gateway to the northern part of Wichita along I35. He said the first thing you see is this nice industrial park area. He said if this salvage yard is approved, it will be the first thing that will hit you as you drive into Wichita and it will have a negative effect on Wichita. He mentioned the photographs of the Kansas City operations with a crane and a pile of scrap that is well over 60 feet high. He said no screening, unless you come up with a bubble, is going to hide that from the area. He said he believes this is going to have an adverse effect on some of the other businesses and he is afraid that once the door is opened up, they will not be able to stop it because of the zoning. He said just because it is a GI area and everything is allowed in there but the kitchen sink doesn't necessarily mean that all types of businesses are appropriate for the area. He said especially after they have spent many hours developing the protective overlay. He said it is very rare that businesses come in and police themselves. He said this is a unique area to the City. He concluded by asking the Planning Commission to deny this because this would have an adverse effect on what they are trying to do in the area. He commented that Campbell Recycling is very limited in what they can do, but they are doing baling, scraping and processing which they do not have permission to do. He said they came back to the Commission and tried to get approval but he recalls that Commissioner McKay commented at the time of the denial that it would have an adverse effect on the quality type industrial park they are trying to do at Bridgeport.

**MARNELL** asked if the type of business he conducts at his location could be conducted in a lower zoning classification than GI.

**ALDRICH** said his office is located downtown, but he is a member of BABA. He said he buys and sells railroad car parts, so that is not issue with the Bridgeport area.

**RITA \_\_\_\_\_ HOSPITALS OF HOPE, 3545 NORTH SANTA FE** said she was present to express her concern about this issue. She said she agreed with Mr. Lowe and Mr. Hicks and said there was no way that this kind of visual blight and noise pollution will not affect property values in a negative way. She said they are also concerned that this may cause increased crime by lowering property values and providing motivation for crime. She said they have had issues in the past when parts were stolen off of their vehicles for scrap and they are concerned that this could happen again.

**MARNELL** asked if she knew if Hospitals of Hope could operate in lower zoning than GI.

**RITA \_\_\_\_\_** said they are a non-profit organization with an office and warehouse located in Bridgeport and that she didn't know exactly what the zoning requirement would be for that.

**DENISE GERBER, 2612 N. LONFGELLOW, FINANCIAL MANAGER AND RECORDING SECRETARY FOR MOORES COLLECTIONS, LLC.** she said Moores Collections invests in commercial real estate and leases property for rental income. She said typically they hold real estate long term and acquire quality and functional properties in good locations and lease them to financially sound and quality tenants that take pride in operating their businesses at these locations. She said last June the company acquired 3030 N. Ohio, which is located two blocks east of 29<sup>th</sup> Street and Meade. She said this 10,000 square foot warehouse is located in the Bridgeport Industrial Park and they have made a substantial investment. She said they were successful in leasing the property in less than 6 months to a truck servicing operation, which they felt was good considering the downturn in the economy. She said the tenant and company have made substantial investments in property improvements. She said their



major concern is retaining the economic value in this property. She said they are worried that the market value of this property will be difficult to sustain if this conditional use for a scrap yard is approved. She said they worry if they will have difficulty retaining their current tenant or attracting any future tenants. She said they are also concerned about visual blight. She asked the Commission to visualize three floors of piled junk cars or scrap metal. She also mentioned potential noise, airborne and ground pollution, and extra traffic. She said they believe allowing a wrecking and scrap operation will detract from other businesses in the area and negatively affect property value; therefore, they oppose the proposed conditional use.

**JOHN C. WADSWORTH, 1418 SPORT OF KINGS, PRESIDENT AND OWNER, PIPING AND EQUIPMENT CO., 1111 EAST 37<sup>TH</sup> STREET NORTH** said they are a 64-year old mechanical contractor that builds refineries, power plants, pipelines and other stuff that people don't want in their backyard. He said they have been in the Bridgeport area for 64 years and employ anywhere from 150-300 employees on a full-time basis and spend between \$10-\$15 million dollars per year in salaries. He said they were located on North Topeka Street, but three years ago he purchased property on North Ohio and 37<sup>th</sup> Street and has invested approximately \$3.5 million dollars on that manufacturing facility that includes an office building and fabrication shop. He said he is against the proposal and staff report and recommendation. He said he believes they need to ask more questions on some of the staff report recommendations. He specifically referred to page 4 of the report, item #5 that talked about storage of materials, bales, and scrap metals on surfaces approved by the Office of Central Inspection (OCI). He said he did not know what an "approved surface" was and he said he was not sure whether OCI has the staff to enforce that, which he said has been proven over and over again by the condition of the Campbell Scrap Yard. He said the Campbell Recycling Center has a lot of industrial waste that is not permitted but they continue to be in operation. He referenced item #7 that talked about "storage of all metals shall be organized and in an orderly manner." He said he was not sure what that definition means. He asked how you store scrap metal that is over 30-feet tall. He mentioned Cornejo's storage of materials in south Wichita and said he assumed that was considered orderly. He mentioned item #9 which talked about weed control. He said he would like to know how to do that on his eight acres because weeds are very tough to control. He mentioned Kansas Department of Health and Environment (KDHE) regulations and said he would like to know how you take in salvage vehicles without liquids. He asked how you get liquids out of vehicles and motors. He said he understands gas tanks will not be part of this process and will be disposed of in other places. He concluded by saying in short Piping and Equipment located on North Ohio is against staff's recommendation without further information.

**MARNELL** asked if Mr. Wadsworth's manufacturing facility required GI zoning?

**WADSWORTH** responded yes, their operation requires GI type zoning. He added that when he was recruited to move his business to Park City, he decided to stay in the Bridgeport area because of the zoning and the location of the highways. He also said he believed the Siemens plant would have been located in Wichita if the city had done a better job of promoting the Bridgeport area.

**LOU EFTINK, PRESIDENT OF DESIGN BUILD CONSTRUCTION** said he also bought property a couple of years ago at **1330 E. 37<sup>TH</sup> STREET NORTH**. He said he is a member of BABA who has been working diligently on a protective overlay. He said he strongly opposes this proposal, not because he agrees there are areas that you can put this operation other than GI. He opposes it because the applicants themselves said everywhere they go they are opposed to. He said because they pile trash so high and then only have an eight-foot fence, they are not trying to be a good neighbor. He said he does not have the answer. He said he knows things can be done inside and that things don't have to be piled 30-feet high. He said these are not even options. He said once they move in, they can pile debris 30-feet high and are not limited to three stories; it can be up to four and five stories. He said we can't control it. He said just because Glickman is there, they can't change that but they don't have to compound it. He said they are

just asking that they become a good neighbor and figure out a solution. He said they are the ones bringing this problem into the area. He said anyone in this room who owns property knows this is not going to increase the value of their property. He said he strongly opposes this until they come up with an environmentally friendly plan to be in an upper end industrial zone. He asked the Commission not to accept the proposal as it was presented today. He said once they are there OCI does not have authority to enforce the conditional use and the language is so generic, how do they enforce it? He asked how you define controlling weeds. He said they are battling in other areas and when it is brought to the City's attention, someone says that is acceptable. He concluded by saying that the City spends a lot of time trying to enforce something that just should not have been approved to begin with.

**KAPLAN** referred to a map that depicted 12 recycling facilities, scrap facilities, and auto recycling facilities between 21<sup>st</sup> and 31<sup>st</sup> Streets, and from the Bypass to Broadway. He said those are similar industries to what he is seeking a conditional use for today. He said there are one dozen of them and there is a reason they are located within this area. He said they are not there coincidentally or by accident. He said they are there because that is the area that was designed and planned to house them. He said they are concentrated in that area for a reason, it just didn't happen. He said that is where the City put them because that is the suitable area for them. He said they have GI zoning and access to rail. He said he tries very hard not to put on his lawyer's hat and not to get adversarial at administrative hearings; he saves that for the courtroom. He referred to several slides of areas located in Bridgeport. He said the slides are self-explanatory. He said they have heard that this is a pristine area. He mentioned the recycle oil plant, trailer storage and a pipeline. He commented these slides are the nature of area the area and that is what you see from 135 and the immediate neighborhood. He said this is an industrial park that houses many recyclers and salvage operations. He concluded by saying that he tried very hard to get a meeting with these folks to discuss these matters and said he got no response.

**HENTZEN** asked when this area for this type of activity was established by the City?

**MILLER** said between 1937 and 1958. He said when researching that question, he found a 1937 map that showed "F" Zoning which was the old heavy industrial designation south of 29<sup>th</sup> Street, then in 1958 there was a City map that showed heavy industrial zoning up to 37<sup>th</sup> Street.

**SHERMAN** referenced a letter in the applicant's packet from Westar Energy concerning energy estimates from someone who reports to him. He said this was a service Westar provides to all new customers. He asked if that put him in conflict on this proposal.

**LANG** said he would not think that would cause a conflict of interest. He said that was someone providing information and not part of the application.

**HENTZEN** said he should ask the same question, since he owns and operates out of 3711 N. Hillside.

**LANG** said that address was not located in the notice area for this application.

**MITCHELL** said he was going to recommend denial of the application on the basis that it is not compatible with the 2030 Functional Land Use Guide; does not increase the potential for employment and it has not been shown to be a compatible use for this area.

**MOTION:** To deny the application.

**MITCHELL** moved, **HILLMAN** seconded the motion.

**MARNELL** said he was going to be the “odd man out” today. He said he was going to make a substitute motion to approve per staff comments. He said he has commented before that this is zoned GI, which is the most heavily zoned area the City has. He said since the 1970’s the City has spent a lot of money dealing with groundwater issues in the Bridgeport area to make the land usable for industrial use. He said he believed some purchasers took advantage of the lower land costs in the area and now want to have the area be something other than what it is which is a heavy industrial area. He said that is why he is making the motion.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation. (And later added a 35-foot height restriction and that no materials could be stored outdoor further north than the south side of the existing building.)

**MARNELL** moved, **SHERMAN** seconded the motion.

**SHERMAN** asked if there was any limitation on how high the stacks can be.

**MILLER** said he couldn’t remember if there was a height limit in the zoning district, but said typically that is a building issue which means it is unlimited, other than just being able to hold the pile with a slope.

**SHERMAN** asked if it was prudent to amend that motion to have a height limit.

**MILLER** responded that the Commission could place a maximum height limit.

**MILLER** commented there was an 80-foot building height limit.

**MARNELL** suggested a maximum of 35-feet in height.

**HAYES** commented that they would be okay with 35-feet if that is what it takes to satisfy the Commission.

**HILLMAN** asked if they would be willing to build a 35-foot wall.

**HAYES** said he didn’t know if that was possible. He said they would like to work with the Commission, but he didn’t know about that.

**HILLMAN** suggested a 20-foot wall and limiting the stacks to 20 feet.

**HAYES** commented that 20 feet was pretty low and they would rather get approval for something that was 30-35-feet high.

**SHERMAN** asked about the buffer from 29<sup>th</sup> Street.

**HAYES** said the building was going to remain, but if the Commission would like more restrictions where they are actually storing materials outside, they would be fine with that. He said they have no intention of storing materials in front of the building on 29<sup>th</sup> Street.

**KAPLAN** asked for clarification on the height restriction.

**SHERMAN** said 35-feet from the motion maker.

**KAPLAN** replied that they would accept the lesser height restriction if that was the will of Commission.

**MARNELL** said he would like to change the substitute motion to include a 35-foot height restriction; and no materials being stored outdoor further north than the south side of the building.

**HILLMAN** asked the motion maker if he wanted to add anything to the eight-foot designated wall.

**MARNELL** responded that he didn't think there was anything you can do in terms of the interstate being an elevated road. He said as far back from 29<sup>th</sup> Street as this operation is going to be, he said he believes it will pretty much over most of the operation.

**FOSTER** asked if there has been any discussion about limits of the proposed protective overlay within this GI zoning

**MILLER** deferred to **DONNA GOLTRY**, Planning Staff.

**GOLTRY** said geographically the protective overlay mostly focused on 29<sup>th</sup> Street and south. But he may want to ask the members of BABA who were present for clarification on that.

**FOSTER** clarified that if for unknown reasons the building is taken down at the site, the only requirement is an eight-foot solid screening 150 feet south of 29<sup>th</sup> Street.

**MILLER** asked for clarification of the current motion to see if the height of the screening was higher than the 8-feet required by the UZC.

**FOSTER** asked for clarification on the protective overlay limits.

**MILLER** explained that the property owners in the area submitted a proposal, but that staff doesn't have anything drafted up yet.

**HENTZEN** said this question applies to the bigger picture of Wichita and Sedgwick County because of the hundreds and of thousands of cars. He asked what are we going to do about them if we can't put them in the lowest zoning area that the City has? He said this is a real problem and suggested that they get it settled because they spend three to four hours on discussion every time there is an application for a salvage yard. He said what are they going to do and what should they do?

**DIRECTOR SCHLEGEL** commented that sounded more like a rhetorical question. He said Wichita-Sedgwick County does not have a wrecking/salvage yard plan. He said each case is addressed on a case-by-case basis, with each case being judged on its individual merits.

**MITCHELL** asked that the map be displayed reflecting salvage operations in the area. He said with all those salvage companies in one area, it doesn't seem to him like there is a pressing need to add one more.

**HENTZEN** said he thinks it is pressing with the number of cars in the area.

**SUBSTITUTE MOTION PASSED (6-5).**

**DOWNING, HENTZEN, HILLMAN, MILLER STEVENS and MITCHELL – No.**

**EXCERPT OF THE AUGUST 19, 2010 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING HEARING**

**Case No.: CON2010-08** (Returned by City Council 6-15-2010) - Midwest Scrap Management, Inc. (owner) / Robert Kaplan (agent) Request City Conditional Use to permit wrecking and salvage at 2901 N. Mead Avenue on property described as;

Lot 1 except beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; thence West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas.

AND

Beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas, generally located At the southwest corner of 29th Street North and North Mead Avenue.

**BACKGROUND:** The application area is located at the southwest corner of north 29<sup>th</sup> Street and Meade Avenue, and is zoned GI General Industrial (“GI”). The applicant is seeking a Conditional Use to permit “wrecking and salvage” on the 25.68-acre site that is developed with an office building. Midwest Scrap Management, Inc., intends to operate a metal and scrap salvaging, sorting and shredding operation. Material will be brought in primarily by truck; however processed material is primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 30 on a busier day. Scrap piles may reach 30 feet in height. The applicant’s do not part-out vehicles. Inoperable vehicles located on-site will be shredded. Shredded material ends up in “fist-sized” pieces. The application area has one access point each to 29<sup>th</sup> Street and to Meade. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines “wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof. A wrecking and salvage yard is allowed by Conditional Use permit in the LI Limited Industrial (“LI”) and GI districts, and allowed by right in the Air Force Base (“AFB”) District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent the area of such fence. With respect to the requirement that the use not abut an arterial street, planning staff has been advised by the Office Central Inspection that as long as the use is located at least 150 from arterial street right-of-way it is considered to not be abutting. The existing chain-link fence depicted on the submitted site plan does not meet the opacity requirement mention above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood. In the past, staff has received complaints regarding the use of large rectangular concrete blocks as screening material. It is recommended that such fencing material be prohibited from meeting the screening requirement.

Surrounding property is all zoned GI, and is used for a variety of industrial uses including warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing, and salvage and wrecking. Glickman Metal Recycling is located just east of the application area, and contains significant piles of scrap metal.

**CASE HISTORY:** The site appears to have been zoned heavy industrial in 1958, and was platted as the North Industrial Park Addition in June 1972. The request was sent to the City Council on June 15, 2010. The action of the City Council was to return the request to the District Advisory Board and the MAPC for further consideration. The City Council minutes of June 15, 2010, are attached.

**ADJACENT ZONING AND LAND USE:**

NORTH: GI General Industrial; elevator, manufacturing  
SOUTH: GI General Industrial; grain elevator  
EAST: GI General Industrial; outside storage of semi-truck trailers and mobile home-type trailers, warehousing  
WEST: GI General Industrial; outside metal recycling; steel fabricating

**PUBLIC SERVICES:** 29<sup>th</sup> Street is a paved four-lane arterial with approximately 50 feet of half-street right-of-way. Meade is a paved two-lane street with 35 feet of half-street right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for “employment / industry center.” Employment / industry centers encompass areas with uses that constitute center or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code (“UZC”), except for the Air Force Base (“AFB”) district.

The application area is still subject to the amended November 27, 1972, General Urban Renewal Plan. The General Land Use Plan map of that document depicts this site as appropriate for “heavy manufacturing” that is a category of industries which are apt to have an extensive impact on the surrounding area. Included are heavy assembly and fabrication uses which may create considerable traffic volume, noise, dust, odor, blast and smoke. Floor area to lot area ratio shall not exceed 3.00 with maximum lot coverage limited to a maximum of 50 percent. As currently developed the site complies with these development standards.

The January 4, 2005, 21<sup>st</sup> Street North Corridor Revitalization Plan’s Preferred 20+ Land Use Plan depicts the site as appropriate for “general industrial” uses, that acknowledges the importance of heavy industry in the Wichita region and specifically the importance of rail dependent uses in the plan area. Rail dependent and heavy industrial uses are allowed in this category. Light industrial uses area also allowed.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials. Recycling, salvage or wrecking activity is not permitted within 570 feet of 29<sup>th</sup> Street’s southern right-of-way.
2. Screening walls shall comply with Sec. IV-B.3.h, except that the use of the large rectangular concrete blocks as fencing material is prohibited.

3. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.
4. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material ) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth

in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned GI General Industrial, and is used for industrial activities ranging from outside storage of trailers, warehousing, manufacturing, steel fabricating or wrecking and salvage. The wrecking and salvage operation has extensive piles of scrap.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned GI General Industrial which permits a very wide range of commercial, office and industrial uses. The site is developed with an office building and has some room for additional building. The site could be used as currently zoned; however, there has been increasing interest in wrecking and salvage, as demonstrated by two recent development applications within the vicinity of this application, and city-wide there have been a total of 10 requests in the last two years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval are designed to minimize foreseen impacts to nearby property owners.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide another location for the disposal of scrap material. Denial would presumably present the prospective purchaser with delays that could result in a loss of income and business opportunity.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is in conformance with adopted plans as described in the conformance with plans and policies section located above.
6. Impact of the proposed development on community facilities: Existing community facilities are in place to address anticipated demand on community facilities. Truck traffic would potentially increase but the streets in the area were developed to accommodate industrial traffic.

**DALE MILLER**, Planning Staff presented the Staff Report. He reported that DAB VI voted 4-3 to recommend approval of the application.

**FOSTER** asked about the noise ordinance with regard to the decibels generated by the shredding machine.

**MILLER** commented that the noise ordinance addresses “ambient level” where readings are taken to see if noise generates a certain level of decibels above the ambient level. He said in industrial areas there are more tolerant noise levels.

**FARNEY** asked if there was any update on the number of truck trips or on the rail issue.

**MILLER** said the applicants have indicated that it is important to their operation that they have railroad access and that was one of the keys to their selection of this site. He said at the DAB meeting the applicants indicated that there would be up to 60 heavy trucks a day coming and going from the site.



**BOB KAPLAN, 1600 EPIC CENTER, AGENT FOR THE APPLICANT** said Landscape Architect Dan Wilson from Wilson, Darnell and Mann was present to review the revised, updated landscape plan for the site, as well as Rick Hayes from Midwest Scrap Management, Inc., who will be the Operations Manager of the site. He reminded the Commission that they approved this conditional use on March 18, 2010. He said when the matter went before the City Council; the Council referred the issue back to the DAB and Planning Commission due in part to concerns expressed by the neighbors. He said DAB VI reheard the case last night and recommended approval of the application. He said enhancements have occurred to the plan since previously approved by the Commission including a very sophisticated landscape plan designed by Wilson, Darnell and Mann. He said they have also been discussing and will offer not to use Mead Street for ingress/egress onto the property but use 29<sup>th</sup> Street only. In addition, he said they have decreased the size of the application area from approximately 25 acres to 12.4 acres. They will also make no changes to the building facing on 29<sup>th</sup> Street. He referred to a booklet which was a handout and briefly outlined the contents including a cover letter highlighting several issues they felt were salient to consideration of the application, a letter from Westar Energy, site map, several landscape renderings of the site and pictures of surrounding properties. He mentioned that this was a GI General Industrial zoned area with close access to I-135. He said this is not near a residential area, and asked the question "If not here, where." He concluded by mentioning the private covenant and conditions the applicant has offered the Bridgeport Area Business Association (BABA), which included not only staff conditions but additional conditions they have agreed to. He also mentioned that Recreational Vehicle Products has withdrawn their protest petition, and the 47% protest included about three properties.

**DAN WILSON, WILSON, DARNELL AND MANN, LANDSCAPE ARCHITECTS, 105 SOUTH WASHINGTON** referred Commission members to several renderings of the landscaping plan for the property. He mentioned the proposed berm along Mead Street and a portion of 29<sup>th</sup> Street. He said this will provide screening from a lot of different locations; however, the top of the shredder can be seen from the southeast. He said there will be an 8-foot decorative concrete wall on top of the 6-8- berm. He said in addition, there will be landscaping to soften the view including trees and low level plantings that will be large enough to make the landscape meaningful. He said the perspective or visual cone works well close to the site but added that away from sight you might be able to see a little more.

**DIRECTOR SCHLEGEL** asked Mr. Wilson to describe the boundaries of the smaller conditional use application area and the proposal to cut off access to the site from the east along Mead Street.

**WILSON** said it is the applicant's intention to use 29<sup>th</sup> Street as the main access onto the site. He said they had planned to leave the access drive from Mead Street onto the site open; however, if the Commission desires that closed, they are willing to do that. He said the 12.4 acres encompasses from the end of the building to the south property line, which is approximately one half of the original site application.

**NICK HAYES, WICHITA OPERATIONS MANAGER, MIDWEST SCRAP MANAGEMENT, INC, 5539 RUSSELL ST, MISSION, KS** said they will be operating a state of the art facility not only visually but the shredder operation itself. He said this is identical to the plant they operate in Kansas City. He said this shredder has the capacity to shred and sort a car in 15 seconds. He briefly explained the operation and commented that the landfills like to use the "fluff" which is one of the byproducts to keep down odor. He said all materials will be stored on concrete until they are trucked to the landfill. He said the steel will be loaded onto rail cars to be sent to steel mills across the country where it will be recycled. He reviewed the collection process; compliance regulations; and dust suppression system. He said they take no cars with gas tanks or fluids or any kind. He mentioned they obtain most of the cars from auto salvage and other scrap yards so the tanks and fluids are removed before they receive them.

**MOTION:** To grant the speaker two additional minutes.

**JOHNSON** moved, **FARNEY** seconded the motion, and it carried (9-0).

He said as far as any environmental issues, they are closely monitored by Kansas Department of Health and Environment (KDHE); there is concrete around the shredder; and they have a water reclamation system which they use to keep dust down at the site. In addition, he said any run-off is collected in concrete tanks and recycled to cut down on dust. He said a crane; other equipment; and improvements to the site will be incorporated into the project.

**DOWNING** asked for clarification about the "fluff" material keeping down odors.

**HAYES** clarified that the "fluff" was used at the landfill sites to cut down odors.

**DOWNING** asked the applicant if they were willing to physically close the entrance from Mead Street onto the site.

**HAYES** replied yes; however, he noted that the Fire Department may request that it be left open as an alternative entrance into the site and for emergency purposes.

**FOSTER** asked if the revised conditional use application area to 50% of what was originally requested will affect the viability of the operation.

**HAYES** said they did not think so because the machine processes materials so quickly.

**FOSTER** asked about the decibel level of the shredding operation.

**HAYES** said since the machine is larger with thicker inner linings, it actually cuts down on the noise level, but he added they will comply with the City Ordinance.

**HENTZEN** (In @ 2:40 P.M.)

**FARNEY** asked how long the material sits on the ground before it is loaded onto a railcar.

**HAYES** said not longer than one month because they are constantly processing material.

**GEORGE E. PEARSON, 821 EAST 25<sup>TH</sup> STREET, PEARSON EXCAVATING** said he works close by and drives by the site on his way to work. He said sitting in his office he sees the same thing down the street from him. He said this type of operation fits into the area since people are conducting this type of operation already. He said he sees nothing wrong with the application and added that it creates jobs and adds to the tax base. He said the bottom line is he is in favor of approval of the application.

**SCOTT EILERT, CARGILL, 2901 NORTH MEAD STREET** said they rent the facility from Midwest Scrap Management and that he was speaking in favor of their proposal. He commented that Midwest purchased the site from Cargill and that they are leasing the facility from Midwest for approximately 18-24 months while they are finishing their new facility to be located on First Street downtown. He said he wanted to acknowledge that Midwest purchasing this property was a key element in their project to build a \$15,000,000 facility downtown. He said they felt this was a win/win situation. He said Midwest is creating jobs and is a company willing to move in and invest in Wichita. He said granted, not at the same level as Cargill, but they are supportive of businesses that are willing to make investments in the area and create jobs. He said the proposal is consistent with zoning in the area. He added that he felt they would set a new precedent for curb appeal and appearance with the improvements

the owners are willing to make to the property. He concluded by saying that he hoped the Commission would look favorably on the proposal.

**MCKAY** asked if there were any conditions on the sale of the property, such as approval of this conditional use permit or did Midwest buy the property outright.

**EILERT** responded that Midwest bought the property outright.

**RANDY SPARKMAN** said as a former City employee and zoning supervisor in the Office of Central Inspection (OCI) he was present to speak in favor of the proposed project. He said he was not only speaking for this project but for use of the GI General Industrial district in general. He said he understands owners in the area are concerned and want this GI zoned area restricted to some other uses. He commented that the GI zoning district is the least restrictive zoning district and hazardous uses are very rarely restricted in the district. He said he believed staff has levied some very good restrictions on the proposed business and specifically mentioned the 35-foot material height. He said there was a statement made at the DAB that you can see this product from the highway and various other locations. He said he submits that someone has to have extremely good vision to identify exactly what the material is from the highway. He said he was very impressed with the proposed screening and landscaping the applicant was willing to provide to protect the surrounding neighborhood. He said this area was designed specifically for this kind of use.

**FOSTER** asked what type of screening is required and mentioned some of the operations along 21<sup>st</sup> Street east and the 21<sup>st</sup> Street Revitalization Plan. He asked about screening where this site abuts the railroad tracks.

**SPARKMAN** said he was not wholly familiar with the 21<sup>st</sup> Street Revitalization Plan. He said most of the operations on east 21st Street are not wrecking and salvage, but recycling which he believed required different levels of screening. He said the Office of Central Inspection (OCI) currently has enforcement issues on screening along 21<sup>st</sup> Street.

**MILLER** commented that Glickman Metal Recycling is between Broadway and the applicant's site.

**BRIAN TURNER, HALL INDUSTRIAL SERVICES, 1221 EAST MURDOCK AVENUE** said he owns lots 2 and 3 in the Bridgeport Industrial Addition which are adjacent to this site. He said he was in favor of the proposal. He said he has personally been in scrap yards in Kansas City, Oklahoma City, Dallas and Houston and said he has never been in one that looks as nice as this one does. He also mentioned that there were similar businesses in the area. He concluded by saying he was in favor of the application.

**LAURIE CAMPBELL, OWNER, 3423 NORTH ST. FRANCIS, 3428 NORTH EMPORIA, AND LOT 2, BLOCK 3 BRIDGEPORT INDUSTRIAL ADDITION** said she is in the recycling business and supports Midwest's conditional use request. She said this is the type of business that belongs in the area since Bridgeport and the surrounding area is GI General Industrial zoned. She said she has not been approached by BABA concerning this proposal. She mentioned increased traffic in the area which resulted in the installation of a stop sign at 29<sup>th</sup> Street and Ohio Street. She said if trucks are moving in the area, that means people are doing business and money is being made, which is better than having a for sale sign on the property. She commented that you have to wait for the train in the area now. She said Midwest is making a huge investment in the community, creating jobs, paying taxes, using utilities and that this operation will provide a beneficial service to the community. She said the aircraft companies not working at their full potential right now. She said there is a shredding operation a stone's throw from this site and added that is another reason this is the best place for this type of activity. She said GI zoning will

accommodate the Midwest Scrap operation and that Midwest has bent over backwards to try to accommodate the neighbors. She said Midwest has the right to operate a business and that this is the correct location to put it in. She concluded by asking the Planning Commission to approve the conditional use request.

**BOB ALDRICH, 804 NORTH MAIN STREET** said he was present to speak in opposition of the proposed scrap and metal salvage yard. He said the Bridgeport area was created by the City of Wichita to clean up a blighted area, create tax revenues and produce jobs. He mentioned the three phases of the Bridgeport Development. He said 18 companies originally located in the industrial park because they believed it was going to be a high end industrial park. He said these companies included Coleman, Love Box, Excel and others. He said that number has grown to 43 companies on the 80-acre Bridgeport site ranging in size from ½ acre to 18 acre lots. He said this area is ideal because of its close proximity and access from K-96, I-135 and I-235 highways. He said the main purpose and intent of the City in creating this high end industrial park was to attract more job opportunities into the area. He said several of the companies' employee several thousand employees, whereas the scrap metal business will only create approximately 20 jobs. He mentioned the 21<sup>st</sup> Street Revitalization Plan and added that just because GI zoning was a catch all area, that doesn't mean everything fits into that zoning. He said if this request is approved it will be detrimental to the rest of the businesses in the area who will hesitate to expand and create more jobs. He asked the Planning Commission to consider denial of the application.

**RICK LOWE, 1509 SOUTH SPRINGHOLLOW CIRCLE** said he owns and operates two businesses in the area and is President of BABA (Bridgeport Area Business Association). He gave a brief review of the origin of BABA which began in conjunction with discussion of the 21<sup>st</sup> Street Revitalization Plan. He said land use issues are what brought the group together. He pointed out the fact that just because the area is zoned GI, doesn't mean anything and everything fits into it. He said the conditional use procedure was put in place and designed so the City can address each application on a case-by-case basis. He said they are looking for higher end industrial use and something that will fit the character of the neighborhood. He said they are currently working on a Protective Overlay (PO) for the area with Planning Staff and added that just because a site isn't in the PO area doesn't mean they shouldn't be concerned about it. He said they will be notifying landowners within 200 feet of the PO. He commented that the Planning Commission denied a conditional use permit for a piece of property further north of 29<sup>th</sup> Street on Ohio Street. He said if this request is approved it doesn't take a rocket scientist to realize that next month the Commission will be talking about a permit on Ohio Street again. He said they don't want to see a trend started of these types of industry processing uses in the area. He mentioned the 2030 Functional Land Use Guide that said the area should be used as an employment industry center. He said taking this 25 acre site and converting it to use that will employ 10-15-20 people is not compatible with the Land Use Guide. He concluded by stating that he did not believe this conditional use application was a good fit for this neighborhood and suggested they locate south of 25<sup>th</sup> Street where the other wrecking/salvage yards are located.

**JOHN C. WADSWORTH, 14810 SPORT OF KINGS, OWNER AND PRESIDENT OF PIPING AND EQUIPMENT** said he employees over 200 people with a payroll of \$10,000,000 - \$12,000,000 annually. He referred to the map of scrap yards in the area provided by Mr. Kaplan at the March 18, 2010, Planning Commission Hearing. He said he did not believe the map was accurate and was misleading as to the actual number of operations in the area. He briefly went through the 12 locations one-by-one referring to pictures he took of each operation. He said of the 12 locations referred to on the map, only seven were actually in operation, and five of those seven were located on east 21<sup>st</sup> Street. He referred to the area along north 21<sup>st</sup> Street between Broadway and I-135 and commented that there was absolutely no development in that area. He concluded by referring to a map of the Bridgeport area today and commented that it was not an area for recyclers. He referred to the newspaper articles provided as a handout where the St. Joseph Fire Chief suggested closing down the Midwest Scrap Management

operation in Kansas City. He ended his presentation by asking the Commission to deny the conditional use application.

**JOHN PRATHER, 1833 RIDGE ROAD, EL DORADO, VICE PRESIDENT CORPORATE RELATIONS, GROENDYKE TRANSPORTATION, INC., 3550 NORTH OHIO STREET**

provided a hand out which was two articles from the *St. Joseph News-Press* dated March, 2004, regarding fires and repeated Code violations at the Midwest Scrap Management facility in St. Joseph. He said as a safety supervisor and member of the State Commission on emergency preparedness and response he has witnessed a lot of operations and been involved with safety issues and public responsibility in transporting and dealing with hazardous materials. He said Groendyke moved from Valley Center to the Bridgeport Industrial Park for ease of access to the interstate and currently has 100 employees at the Ohio Street address. He said they want to be located with “like” neighbors who are conscientious of safety and security. He said they have concerns about the track record of this operation making application to come into the Bridgeport area. He referred to the newspaper articles and said that operational issues such as these are just the tip of the iceberg. He mentioned transportation congestion and railroad tie ups and added that this operation just does not fit into this area. He commented that when Groendyke moved to Bridgeport they were looking into the future and willing to invest; however, he said this operation is contrary to the future development of Bridgeport. He concluded by saying that compliance with City, State, and Federal regulations is important and the neighbors don’t feel that any fence or berm to hide a bad operation or one that is not in total compliance with regulations will help the area.

**DENISE GERBER, MORRIS COLLECTION, 128 SOUTH DELLROSE** said they own a commercial rental property at 3030 N. Ohio Street located a couple of blocks east of Ohio and 29<sup>th</sup> Streets. She said they have it rented to a transportation service operation that employees approximately 80 people. She said she would like to talk to the Commission about land valuations in the north industrial corridor. She referred to 2 handouts which were maps that reflected the 2009 land values per square foot by parcel north and south of 29<sup>th</sup> Street. She commented that land north of 29<sup>th</sup> Street averages 57 cents per square foot and noted how valuable the land has become. She said land south of 29<sup>th</sup> Street where most of the scrapping operations are located along 21<sup>st</sup> Street averages 27 cents per square foot. She said she had three observations regarding this information: #1 – the further away from the 21<sup>st</sup> businesses area, the higher the land value; #2– businesses north of 25<sup>th</sup> and 29<sup>th</sup> Streets would not be located there today if a third scrap yard was in the area; and #3 - she suggested that if the applicant located this operation south of 29<sup>th</sup> Street, they would still have railroad and arterial access in addition to it being a prime location for a scrap yard. She commented that the information from the County Appraisers office indicated that neighbors will be impacted by non-typical uses. She commented that the Midwest Scrap Management operation will cause economic obsolescence to the businesses currently located in Bridgeport with the noise, dust, smoke, ground water pollution and hazardous and dangerous conditions. She said scrap and salvage operations reduce property values and can adversely impact an area and neighbors. She said given a choice, businesses will not locate near a scrap yard.

**MOTION:** To grant the speaker 1 additional minute.

**JOHNSON** moved, **HENTZEN** seconded the motion, and it carried (9-0).

She asked the Commission to consider compatibility of the application and nature of the use. She said this operation is not typical of the adjoining neighbors and will lower the value of the neighbor’s properties. She asked the Commission not to drive away potential future and current businesses and added that the Commission had a responsibility to make this an even better industrial park like the City leaders envisioned back in the 1970’s. She asked the Commission to please vote no to the conditional land use application.

**PAT HUGHES, 1635 NORTH WATERFRONT PARKWAY, ATTORNEY, ADAMS JONES LAW FIRM** said he was present on behalf of BABA. He said he was present to tie together what the Bridgeport area is, future land uses, and the impact of the proposed development and how these concerns should drive the Commission to a decision to deny the application. He mentioned land use and how it should be discussed in the particular context of this case, not as an ad hoc decision based on the applicant's proposal or the surrounding neighbors concerns, but in the broader picture and future land use questions that are involved as to how land is going to be developed in the City of Wichita. He referred to the 2030 Functional Land Use Guide which he believed was developed as a planning tool to guide the City on decisions like this current application and good land use practices. He said the Commission needs to evaluate if the 2030 Functional Land Use Guide principles are still valid. He commented that prior to 2005 the Land Use Guide designated the Bridgeport area as industrial/transportation/utility and communication. He said the Land Use guide calls for this area to be used as an employment/industry center. He said this proposed use is clearly not an employment center. He said the use is in the category of processing center, and added that this distinction is completely left out of the Staff Report. He said the previous planning calls for the sort of use that is already in the area, which is the combined office/warehouse facility that Cargill had. He said the applicant has not shown that the 2030 Functional Land Use Guide was ill-conceived. He said the scrapping operation is not serving a need that is being generated in the area, but is importing scrap so it is not an adjunct to the existing uses in the area. He mentioned the Golden Factors and character of the neighborhood. He said the site is compatible with the current uses which are office/warehouse; he said it is not compatible with the scrapping operation next door. He mentioned removal of the restrictions and how it will detrimentally affect nearby property. He said they question the truck traffic and violation of KDHE and Kansas Department of Transportation (KDOT) regulations that seem to go along with this type of operation and whether those violations are dangerous to the community. He said the property is not vacant and it is not necessary to remove the current property restrictions for the property to be economically productive. He said any hardship on the applicant is self-incurred, if it exists. He mentioned conformity with plans and referred to the 2030 Functional Land Use Guide, which this application does not conform to.

**MOTION:** To grant the speaker 2 additional minutes.

**DOWNING** moved, **JOHNSON** seconded the motion, and it carried (9-0).

He said impact on community facilities remains unclear and whether the railroad use at this location will cause problems for traffic on 29<sup>th</sup> Street. He said there is an overwhelming opposition to the application by the neighbors. He said the supporters of the proposal want to use their properties or have applied to use their properties for scrapping operations in the Bridgeport area. He said staff's recommendation does not show the difference of employment/industry centers and processing industry uses. He said because of these reasons they feel the right result is to deny the application.

**MIKE BOYD, PARTNER, GODSEND LP, 2822 NORTH MEAD STREET** which currently houses the tenant Mahaney Roofing and is located directly across from the proposed shredder site. He said he has heard testimony that this is a land use issue, which is defined by zoning which did not include the 2030 Functional Land Use Guide. He asked how the decision can be limited to one issue when the issue can have such a deep impact on an area. He said he was alarmed when the Commission approved the use and 35 foot piles of scrap metal with only an eight-foot chain link fence as a barrier. He said he was one of the four surrounding property owners that filed a protest on the Commission's decision. He said he listened to Midwest's proposal for additional screening and thought the proposed new screening was good. He questioned some of the architectural renderings and perspectives. He mentioned that Mead Street is about three feet above the roadbed. He said he does not want the Commission to make a good decision based on bad information. He mentioned other concerns such as the applicant's plans to control the rodent problem, control dust production, provide water to cover the debris on site to cut down on the

smell, creating noise from shredding car bodies and operating a site attractive to birds. He said none of these items is attractive to surrounding neighbors and that it will adversely affect businesses near the site. He said this operation will negatively impact the entire area. He questioned Midwest's claim of investing \$30,000,000 into the facility, and said the \$20,000,000 shredding machine will not be bought in Wichita. He commented that within the last several years Groendyke Trucking and Piping and Equipment have invested \$8,500,000 in buildings in the Bridgeport area. He said Mahaney Roofing employees 87 people and has a payroll of approximately \$3,000,000 annually. He said the investment of the companies currently located in the Bridgeport area is being ignored; however, he feels what the companies currently located in Bridgeport have invested much more than the \$30,000,000 Midwest is suggesting. He said this investment has resulted in creating approximately 6,000 jobs in the Bridgeport area. He asked the Commission to review the statutes and guidelines to see that the community benefits from this use. He said he feels as it stands; only Midwest will benefit and all the other businesses in Bridgeport will be devalued. He asked the Commission to deny the permit.

**LEWIS EFTINK, 1330 EAST 37<sup>TH</sup> STREET NORTH** said he was a member of BABA and supported their position on this application. He read a letter from William R. Nath, President, HOC Industries, 3511 N. Ohio Street wherein he stated that the was "adamantly and unconditionally opposed to the conditional use application to permit wrecking and salvage at 2901 N. Mead Street by Midwest Scrap Management." He commented on the detrimental effect on property values in the area and that it will deter other desirable businesses from locating in the Bridgeport. He also mentioned that granting the conditional use permit is not fair to those businesses who have invested much time and money over the years to build property values in the area.

**KAPLAN** said he thought it was interesting that the only thing opponents to the plan can focus on is the 2030 Functional Land Use Guide. He said it clearly states in the Staff Report that this proposal is in compliance with that Plan. He said the 2030 Guide indicates industrial use and employment; it does not quantify employment. He said 40 jobs are better than no jobs and added that the jobs created will not be menial jobs but will be machine operators and truck drivers. He said professional Planning Staff have made a finding that the conditional use request is compliant with 2030 Functional Land Use Guide so that issue really isn't an issue at all. He said this is all subject to interpretation and commented that if the building is left empty, there will be no jobs at all.

**MOTION:** To grant the speaker 1 additional minute.

**JOHNSON** moved, **HENTZEN** seconded the motion, and it carried (9-0).

He commented that this case was previously approved by the Planning Commission and that when the applicant still received complaints they went to the neighbors and as a result of those conversations they enhanced the request to make Mead Street a private driveway to cut down on traffic; they reduced the application area to 12.4 acres; they agreed to leave the current building and parking lot in tact; and provide additional landscaping. He said this is a better plan than the Commission already approved. He asked the Commission to approve the application so they can go back to the City Council.

**JOHNSON** said he has not talked to anyone about this application; however, he was going to support the application for three reasons. First, he said this is a quality facility that will put other scrap facilities to shame and perhaps encourage them to clean up in the future. He said the applicant presented greatly improved screening and volunteered to cut off access to Mead Street, if the Commission so desired it. He also mentioned that by putting the entire operation on the south of the property the building and hedge will provide a buffer to the north off of 29<sup>th</sup> Street. In addition, he said the size of the area they are requesting for the operation is one half of the original request. He said for those reasons he will be supporting the application.

**MOTION:** To approve subject to staff recommendation and the 12.4-acre limitation on size of the application; improved landscaping plan; emergency access only to Mead Street; and if an emergency access was not required, the berm would go all the way across the road.

**JOHNSON** moved, **KLAUSMEYER** seconded the motion.

**FARNEY** asked if the applicant would be subject to the scrap metal licensing procedures.

**SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY** said as an auto wrecker, they are subject to a different type of license.

**MCKAY** commented that he wasn't present the last time this issue was discussed and that he had some problems. He said whether there were in fact 12 scrap yards in the area was immaterial as far as he is concerned. He said he understood a lot of the reason the Bridgeport area was developed was to clean up the area. He said the area was previously used for the operation of meat packing plants and stock yards, which was one of the reasons the Cargill plant was located there. He said land was cheap and it was in close proximity to the railroad tracks on the west. He said people are concerned that property values are going to go down, he asked where it stops. He said he listened to a presentation this morning at the Advance Plans Committee about developing an overlay for ground north of 29<sup>th</sup> Street. He said there was also discussion at this meeting about approving this request, but disapproving a request north of 29<sup>th</sup> Street. He asked what provision is there to keep this whole area from becoming salvage yards. He said he has some bad feelings going forward that this will be setting a precedent in an area the City is trying to clean up. He said he doesn't care how nice the area is, there are already 7-12 scrap yards in the area. He said he believes approving this would create a problem rather than solving one so he will not be supporting the motion.

**DENNIS** said this area is zoned for what they are talking about. He said he keeps coming back to the question "if not here where." He said, therefore, he was going to support motion, not that he thinks this operation will enhance the area.

**MCKAY** said if the area was zoned for this type of activity, they wouldn't have to be getting a conditional use.

**JOHNSON** said a conditional use permit is required no matter where this type of activity is located.

**GOLTRY** clarified that a conditional use is required in LI Limited Industrial and GI General Industrial zoning.

**JOHNSON** said so this type of activity requires a conditional use no matter where it is located?

**GOLTRY** said this type of operation could be located in the Air Force Base Overlay without a conditional use permit.

**DICKGRAFE** clarified that the motion included that the conditional use permit was for 12.4 acres.

**The Motion carried** (8-1). **MCKAY** – No.





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## INTEROFFICE MEMORANDUM

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**TO:** MAPC Members

**FROM:** Terri Dozal, Neighborhood Assistant, District VI

**SUBJECT:** **CON2010-00008** City Conditional Use to permit wrecking and salvage at 2901 N. Mead Avenue, generally located at the southwest corner of 29<sup>th</sup> Street North and North Mead Avenue.

**DATE:** March 17, 2010

On Wednesday, March 17, 2010 the District VI Advisory Board (DAB) considered a City Conditional Use to permit wrecking and salvage at 2901 N. Mead.

The members were provided the MAPD staff report for review prior to the meeting. *Dale Miller*, Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- How far is the existing metal recycling in the area from this location?
- What is the height for screening?
- What would be the highest estimate of trucks coming to the property on a daily basis as the staff report said fewer than 20?
- Will they recycle fuel tanks and tires?
- What controls do you have in place to keep down dust?
- Will there be hazardous liquid leaching into the ground?
- Will there be retail of yard metal to the public?
- Has the applicant met with the surrounding neighbors about the business they are bringing to the area?
- What impact will the existing businesses have from this recycling center?

Eight members of the public made the following comments, asked questions or expressed opposition of the conditional use request::

- Bridgeport is a high quality industrial park and we are opposed to this.
- What about all the visual blight this business will bring?
- Another previous conditional use request was denied by MAPD due to the 21<sup>st</sup> street revitalization and the City's investment in the Bridgeport area. I oppose.
- I have spent a lot of money on my business to improve the area. The other recycling location has explosions and they scare us. They say one thing at these meetings and do another once they have been approved to operate.
- There has to be another location to put recycling in this city. This is detrimental to our area.
- I would feel a violation of trust by the City if this non-like business is put in Bridgeport.
- An 8-ft. fence doesn't hide anything. This is not good for our neighborhood.
- I'm concerned about retaining our property value due to visual blight. I'm opposed.
- When the Glickman recycling has explosions it shakes our building and what about airborne bits of steel that will get into my equipment and increased traffic in front of my building. I'm opposed.

- The business these owners operate in Kansas City has recycled piles over 50ft high-they can do that here as an 8ft-fence will not cover anything. Another problem is gas tanks and tires strewn throughout K.C. because the recycling plants wouldn't take them. I'm opposed.
- If we get another recycling plant we will have bidding wars between them to recycle which in turn causes an influx of robbery of materials. Who is going to protect our community when this happens. I oppose.

\*\*\*\***Action:** The District VI Advisory Board members made a motion to recommend to City Council to deny (5-0) the conditional use request based upon previous background information of prior applicants and the Bridgeport Association members comments.

Please review this information when CON2010-00008 is considered.

mtd



## INTEROFFICE MEMORANDUM

**TO:** MAPC Members  
**FROM:** Terri Dozal, Neighborhood Assistant, District VI  
**SUBJECT:** CON2010-00008 City Conditional Use to permit wrecking and salvage. At the southwest corner of 29<sup>th</sup> Street North and North Mead Avenue (2901 N. Mead Avenue).  
**DATE:** August 19, 2010

On Wednesday, August 18, 2010 the District VI Advisory Board (DAB) considered a City Conditional Use to permit wrecking and salvage. At the southwest corner of 29<sup>th</sup> Street North and North Mead Avenue

The members were provided the MAPD staff report for review prior to the meeting. *Dale Miller*, Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- What type of drainage would be used inside the facility?
- The height limit of the scrap piles would be at 35ft.?
- What is the daily number of trucks that would be coming into the area?
- Was access to the railroad tracks essential?
- What would be the environmental impact and would the material attract birds and rodents?
- What is the total height of the berms and fencing together?
- Bridgeport has developed a high-end industrial area and invested millions of dollars into it.
- This applicant has done a lot to make this an appealing location site. I've never seen that before.
- Nice landscaping.
- I have a concern with compatibility of the area.

Seven members of the public spoke in opposition of the request stating:

- Where the business would be getting their scrap from.
- The applicant hasn't met with the surrounding businesses to discuss their plans.
- Ground pollution.
- This business doesn't fit into our area and feel they are misleading about what they are going to do. First they said it would be 20-30 trucks daily and now we are hearing it will be 60 trucks coming in daily.
- Our area is a high-end industrial area and if we let this business in it is a step backwards to what we are trying to accomplish. This doesn't fit the character of the neighborhood.
- I have a concern for drivers as Mead Street isn't safe due to projectiles from the shredder.
- De-valuation of our properties and they will drive away other businesses for our area.
- What will this do to the 21<sup>st</sup> street revitalization plan? We don't want 29<sup>th</sup> street to turn into a dump site.

Three members of the public spoke in favor of the request stating:

- This is an essential business for Wichita
- The conversion of scrap to another product is an essential industry.
- This business is in the right location for its needs.

**\*\*\*\*Action:** The District VI Advisory Board members made a motion to recommend to City Council Approval (4-3) of the conditional use request based on staff recommendations.

Please review this information when CON2010-00008 is considered.

mtd

**John Wadsworth**

---

**From:** Miller, Dale [DMiller@wichita.gov]  
**Sent:** Monday, March 29, 2010 3:00 PM  
**To:** John Wadsworth  
**Subject:** RE: CON2010-00008 Protest - Piping & Equipment

The Law Department has advised us that we cannot count e-mailed protests unless there is a signature. One easy solution would be for you to print this e-mail, sign it and fax it to me at 268-4390.

---

**From:** John Wadsworth [mailto:john.wadsworth@pipingequ.com]  
**Sent:** Monday, March 29, 2010 2:35 PM  
**To:** Miller, Dale  
**Subject:** Fwd: CON2010-00008 Protest - Piping & Equipment

John C Wadsworth  
 316.619.5944

Begin forwarded message:

**From:** "John Wadsworth" <john.wadsworth@pipingequ.com>  
**To:** "JLMiller@wichita.gov" <JLMiller@wichita.gov>, "cbrewer@wichita.gov" <cbrewer@wichita.gov>, "JLongwell@wichita.gov" <JLongwell@wichita.gov>, "pgray@wichita.gov" <pgray@wichita.gov>, "JSkelton@wichita.gov" <JSkelton@wichita.gov>, "sschlapp@wichita.gov" <sschlapp@wichita.gov>, "LKWilliams@wichita.gov" <LKWilliams@wichita.gov>, "RLavton@wichita.gov" <RLavton@wichita.gov>  
**Cc:** "john.wadsworth@pipingequ.com" <john.wadsworth@pipingequ.com>  
**Subject:** CON2010-00008 Protest - Piping & Equipment

Ms. Miller

Attached is my opposition to the MAPC decision to allow a conditional use at 2901 N Mead. This conditional use would allow Midwest Scrap Management to develop a scrap yard with 35 foot tall stacks of scrap cars at 2901 N Mead. I look forward to hearing more facts about this company and their proposed operations as I do not believe the MAPC, MAPC Staff or DAB IV has been provided accurate information by the company or their agent, Robert Kaplan.

"We make a living by what we get, we make a life by what we give"

Sir Winston Churchill

[cid:image003.jpg@01CACEA4.7341A200]

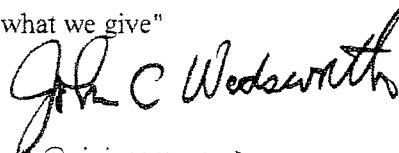
John C. Wadsworth

john.wadsworth@pipingequ.com <mailto:john.wadsworth@pipingequ.com>

316.295.2911 (O)

316.619.5944 (C)

316.838.2014 (F)



This communication, including attachments, is for the exclusive use of addressee and may contain proprietary, confidential or privileged information. If you are not the intended recipient,

# PIPING & EQUIPMENT CO., INC.

P.O. BOX 1065 WICHITA, KANSAS 67201



March 28, 2010

ATTN: MS. Janet L. Miller  
City of Wichita  
455 N. Main Mail Stop 1-13  
Wichita, KS 67202-1688

Reference: CON2010-00008 – City Conditional Use to permit wrecking and salvage at 2901 N. Mead

Dear Ms. Miller:

As president and owner of Piping & Equipment Company, Inc. located at 1111 East 37<sup>th</sup> St North, I am **opposed** to the MAPC decision on March 18, 2010 to approve the conditional use permit for Midwest Scrap and Management, Inc. I believe Robert Kaplan the agent for Midwest Scrap and Management and Mr. Nick Hayes the proposed site manager for Midwest Scrap purposely and willfully mislead the MAPC and the MAPC staff. I do not believe the following items have been addressed by the MAPC in their 6-5 voted to approve the conditional use for 2901 N. Mead

1. The attached map presented by Mr. Kaplan indicates there are 12 approved and operating scrap facilities in the area zoned GI between 21<sup>st</sup> Street North and 32<sup>nd</sup> Street North between Broadway and approximately I-135.
    - a. Item 2 of Mr. Kaplans ledgend shows C&W Auto Salvage which in fact is a residential area,
    - b. Item 5 is not a permitted wrecking and salvage yard – the business is permitted as a recycling facility of household waste,
    - c. Items 8 and 11 are the same facility and business,
    - d. Items 2 and 6 are the same business and not two separate salvage yards.
- This map presented to the MAPC during Mr. Kaplan's rebuttal is very mis-leading.
2. Mr. Kaplan stated during his rebuttal that he had attempted to contact the eight business representatives who spoke against this conditional use request when in fact he had not tried to contact any of the eight business representative present at the MAPC or others who were present at the DAB VI meeting.
  3. Midwest Scrap and Management, Inc. have indicated to the MAPC staff, "It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 30 on a busier day". During the MAPC Midwest Scrap management stated there could be 60 trucks per day using the facility. 60 trucks per day is significantly differ than 30. What is the honest answer?
  4. The MAPC Staff Report indicates the Applicant / Agent is Cargill Meat Solutions Corporation (property owner), Midwest Scrap Management. (prospective purchaser) / Robert Kaplan (agent). It is unclear to DAB and MAPC who the applicant is and who has title to the property.

No one in the MAPC hearing or the staff report is addressing the rail car issue. I believe when rail cars are switched into or from the facility, 29<sup>th</sup> Street North will be blocked. 29<sup>th</sup> Street north is one of the main arterial East – West street in this area.

Midwest Scrap management indicates all vehicles will not contain oils, liquids, and gas tanks. I question how this is possible as vehicles have oils, liquids, lubricants throughout the vehicle. It is well know that old propane bottles which cannot be recycled are disposed of in vehicles which are scraped. When the vehicle is crushed and shredded these propane bottles explode creating an unsafe environment. No one can address where the gas tanks from these vehicles will be

P.O. Box 1065  
WICHITA, KANSAS 67201  
P 316.838.7511 - F 316.838.2014

1111 EAST 37TH ST. NORTH  
WICHITA, KANSAS 67219  
WWW.PIPINGEQU.COM

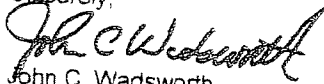
disposed of properly. Any inspection of wrecking and salvage yards currently operating can identify environmentally unsafe liquids on the ground. There are no positive environmental impacts that approval of this conditional use permit will provide the City of Wichita. Traffic volume from 20, 30, 60, or whatever the real number of trucks using the facility is will create traffic issues; noise, dust, odors, and blast from the operation of the facility are all negative issues.

The approval of a conditional use permit for this site are not consistent with the 2030 Wichita Functional Land use. The functional land use category for this site is "Employment/Industry Center" which states this category encompasses areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices.

Limited research of Midwest Scrap Management's current operations in St. Joseph, MO should lead to questions on corporate compliance with local, state, and federal regulations. The DOT Federal Motor Carrier Safety Agency indicated Midwest Scrap Management, Inc. USDOT Number 474469 had 80 DOT inspections in the last 24 months which resulted in 40 out of service citations ( 55.6% whne the national average is 22.27%). Midwest Scrap Managements Vehicle Inspection Indicator is 98.9% which indicates that 98.9% of the time a vehicle operated by Midwest is inspected by DOT a violation is determined. On February 20, 2004 Midwest Scrap Management had a three alarm fire at their St Joseph facility, the seventh fire in a four year period. To quote the St Joseph Fire Chief Jack Brown, "This time, Mr. Brown said he is fed up with the continuous fire calls to Midwest Scrap. This last one really sent a message to them, he said. "I told them no more, that's it. We've spent our last 24 hours at that scene".

The Bridgeport Area Business Association has been working with the City of Wichita Planning department for over one year to develop a protective overlay for the Bridgeport Area. This protective overlay would support the 2030 Wichita Functional Land Use Guide. When the City of Wichita created the Bridgeport Industrial Park, it was the City vision to have a manufacturing area and transportation area to support economic development. This City vision is BABA's vision: Dedicated to maintaining and improving the appearance and safety of the area as well as establishing a vehicle for collaboration of business expertise that would help business grow and benefit employees, owners, and the community. Approval of this conditional use permit for Midwest Scrap Management, Inc. is a major step backwards.

Sincerely,



John C. Wadsworth  
President

CC:City of Wichita Council members: Williams, Schlapp, Skelton, Gray, Longwell  
City of Wichita Mayor Brewer  
City of Wichita Manager Robert Layton  
MAPC Plans Manager Dale Miller

Encl: Kaplan Map  
Bridgeport Photos



City of Wichita  
City Council Meeting  
February 8, 2011

**To:** Mayor and City Council

**Subject:** VAC2010-00034 - Request to vacate a platted drainage and utility easement and a platted utility easement; generally located south of Kellogg/US 54, east of Woodlawn Boulevard. (District II)

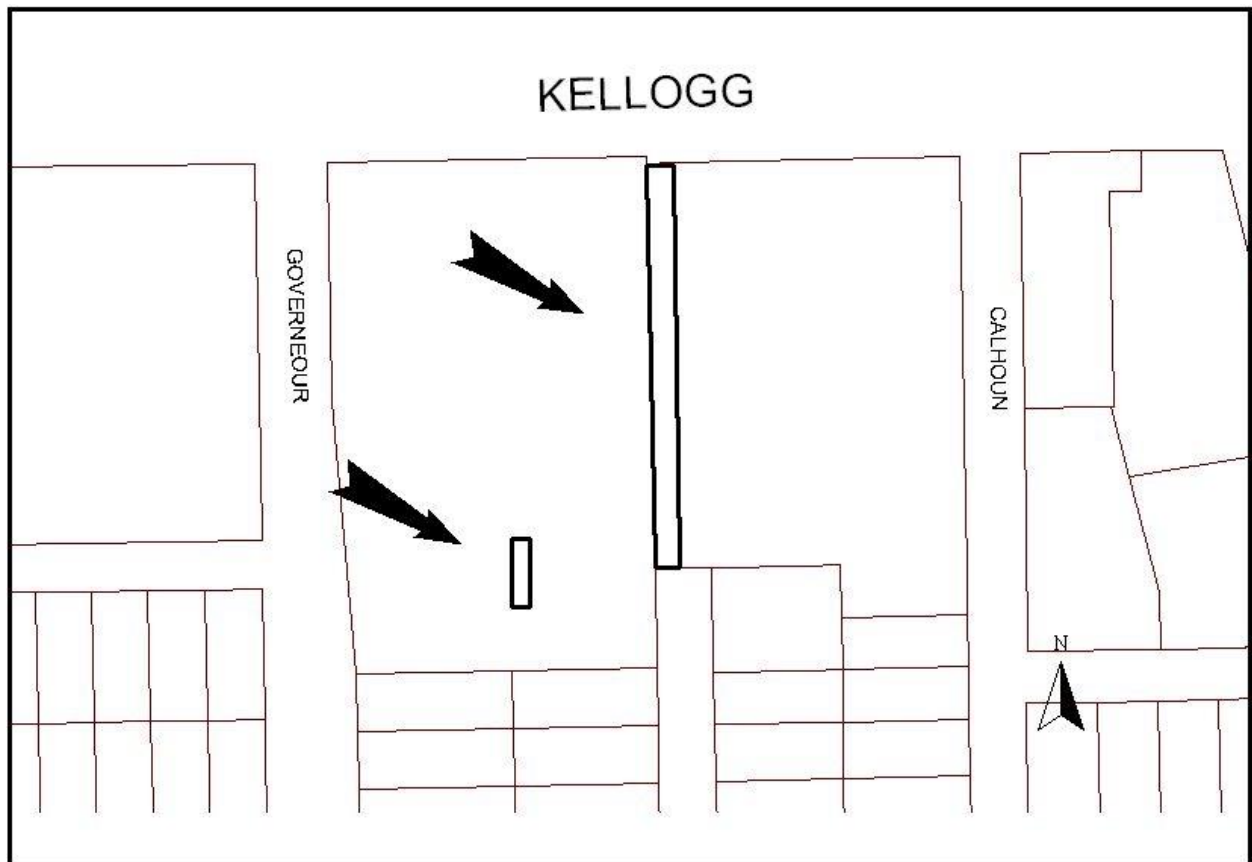
**Initiated By:** Metropolitan Area Planning Department

**Agenda:** Planning (Consent)

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**Staff Recommendation:** Staff recommends approval of the vacation request.

**MAPC Recommendation:** The Metropolitan Area Planning Commission (MAPC) recommended approval of the vacation request.



**Background:** The applicant proposes to vacate the north to south platted 30-foot wide drainage and utility easement generally located along/parallel to the east lot line of Lot 1 and the north portion of the



north/south platted 20-foot wide utility easement located on the south end of Lot 1, all in Block A, all in the Mike Steven Motors Addition. The vacation will allow the expansion of the existing business. There is a water line located in the whole length of the platted drainage and utility easement, and a sewer line with a manhole is located in the whole length of the platted utility easement. Storm Water has equipment in the platted drainage and utility easement. Public Works has approved the following public utility projects for this site: 1565PPW for the waterline relocation; 2085PPS for the sanitary sewer abandonment and terminating manhole, and 2082PPS for the storm water relocation. The Mike Steven Motors Addition was recorded with the Register of Deeds on December 1, 2008.

**Analysis:** The MAPC voted (13-0-1) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

**Financial Considerations:** All improvements are to City standards and at the applicant's expense.

**Goal Impact:** The application supports the City's goal to Ensure Efficient Infrastructure.

**Legal Considerations:** A certified copy of the Vacation Order and a dedication by separate instrument of a drainage easement, have been approved as to form by the Department of Law and will be recorded with the Register of Deeds.

**Recommendation/Actions:** Follow the recommendation of the Metropolitan Area Planning Commission, to approve the Vacation Order and authorize the necessary signatures.

**Attachments:** No attachments are necessary for this vacation request.

**PRELIMINARY ESTIMATES  
FOR CITY COUNCIL FEBRUARY 8, 2011**

- a. 2011 Contract Maintenance Concrete Preparatory Work & Repairs (north of 71st Street South, east of 167th Street West) (472-84960/132724/620570/133116/132724/661686/133116) Traffic to be maintained using flagpersons and barricades. (District I,II,III,IV,V,VI) - \$169,200.00

**City of Wichita  
City Council Meeting  
February 8, 2011**

**TO:** Mayor and City Council

**SUBJECT:** Relocation of ATT Remote Terminal, located at 119th Street West, between Kellogg and Maple (Districts V)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the easement agreement.

**Background:** The Capital Improvement Program (CIP) adopted by the City Council includes funding to improve 119th Street West, between Kellogg and Maple. The City Council approved the project on September 10, 2010 and on December 7, 2010 approved the construction contract. On December 21, 2010, the City Council approved the necessary costs for the required relocation of an ATT remote terminal located in newly acquired 119th Street right-of-way. This ATT facility is located in an existing private easement. The road right-of-way acquired for the project overlays this private easement. It is the responsibility of the City to compensate the utility for relocation due to the presence of the original easement. Public Works & Utilities staff and ATT have determined that relocation to a new easement on adjacent City owned land, outside new road right-of-way, is preferable. This new easement, which will be dedicated for use by ATT, will allow for current and future road expansion and will hold the reimbursable costs of relocation to labor and material only.

**Analysis:** A previous easement authorized by the City Council on December 21, 2010, did not contain language typical to ATT's privately acquired easement. In consultation with both ATT's property department and City of Wichita's Property Management and Law Department, an easement with language agreeable to both parties has been created. Granting of the easement for the remote terminal places the facility outside of current and future road expansion.

**Financial Considerations:** Recording fees will be paid by the Utility.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by improving a major transportation corridor.

**Legal Considerations:** The Law Department has approved the easement agreement as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the easement agreement and authorize the necessary signatures.

**Attachments:** Easement agreement.

## EASEMENT FOR EQUIPMENT STATION AND UNDERGROUND LINES

necessary for GRANTEE'S construction, installation, removal or replacement of said Facilities. Following the initial installation of GRANTEE'S Facilities, and also after any later activities by GRANTEE which affect the Property, GRANTEE shall promptly restore the grounds affected thereby to as nearly as practicable the same condition that existed prior to such activity.

(d) The Easement granted hereby is subject to all valid and subsisting oil, gas, sulfur, and mineral leases, unitization agreements, deeds, easements, rights-of-way, restrictive covenants, mineral and royalty grants and reservations, or other instruments now of record which affect the Easement.

(e) GRANTOR warrants that he/she/they are the owners of the Property occupied by the Easement herein granted, and that GRANTOR has the right to make this conveyance and receive the consideration therefor. GRANTOR covenants that GRANTEE may quietly enjoy the Easement for the uses herein stated. In addition, GRANTOR hereby warrants and represents he/she/they have no knowledge of the existence of past or present production, storage, treatment or disposal of any toxic or hazardous waste or substance, or of hazardous/toxic waste contamination conditions applicable to either the Easement or the Property.

(f) NOTWITHSTANDING ANY PROVISION OF THIS EASEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS OF ANY OTHER THIRD PARTIES, OCCASIONED BY ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

(g) GRANTEE hereby agrees to save and hold harmless the GRANTOR from and against any and all claims, demands, or causes of action of whatever nature, asserted by others which are caused by or arise in any manner out of acts or omissions of GRANTEE, its employees, or any other persons acting under its control or the presence of its facilities on the Easement, in the use and occupancy of the Easement herein granted.

TO HAVE AND TO HOLD the above described Easement, together with all and singular the rights and appurtenances thereto belonging, unto GRANTEE, its successors and assigns, forever, and GRANTOR does hereby bind its self, and its heirs and assigns, to warrant and forever defend all and singular the Easement unto GRANTEE and its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

SIGNED AND EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

**CORPORATE ACKNOWLEDGMENT**

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally  
appeared \_\_\_\_\_, known to me to be the  
person\_\_\_ whose name\_\_\_ is/are subscribed to the foregoing instrument as  
\_\_\_\_\_ of \_\_\_\_\_, a corporation, and  
acknowledged to me that \_\_\_he executed the same for purposes and considerations therein expressed in the  
capacity stated, and as the act and deed of said corporation.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Interactive Customer Information System (CIS) Roadmapping and Optimization  
(All Districts)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the alternative agreement.

**Background:** The City of Wichita Water Utilities implemented the Banner CIS system in 2000 for the purposes of billing water services to its 140,000 active accounts. In November 2008, the City underwent an application upgrade to the Ventyx Customer Suite version 4.1, deployed on a Windows operating system. Since that time, both nightly batch and online performance have degraded, and the completion of nightly financial reporting has been increasingly inconsistent. Due to the challenges in application performance, professional services in the form of quality assurance, staff augmentation, and project management technical consulting was needed.

**Analysis:** The City Council approved a new contract for this work on December 21, 2010. The parties desire to proceed under the format of a contract used between them for past work. The financial and performance expectations are unchanged. This alteration will expedite processing by the vendor.

**Financial Considerations:** The cost of the project is estimated not to exceed \$142,000 with funds available in the utilities contingency budget.

**Goal Impact:** This project addresses the Ensure Efficient Infrastructure goal by providing reliable, compliant and secure utilities.

**Legal Considerations:** The alternative agreement has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the agreement, authorize necessary signatures and approve the transfer of funds from the contingency budget.

**Attachment:** Agreement and Statement of Work.

## LETTER AGREEMENT

This Letter Agreement ("Letter Agreement") is made and entered into as of this 12th day of January, 2011 (the "Effective Date") by and between Vertex Business Services LLC ("Vertex") with offices at 250 E. Arapaho Road, Richardson, TX 75081 and City of Wichita ("Wichita") with offices at 455 N. Main (individually, "Party," and collectively, "Parties").

In consideration of the mutual covenants and agreements contained in this Letter Agreement and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Vertex and Wichita, intending to be legally bound, mutually agree as follows:

## AGREEMENT

The following terms apply to the provision of certain services to Wichita by Vertex, as described in Exhibit A attached hereto and incorporated herein (the "Services").

1. (a) Vertex shall perform the Services as set forth in the statement(s) of work (each, an "SOW") attached hereto as Exhibit A. Wichita shall pay to Vertex the amounts set for in the SOW for such Services, and any travel expenses, applicable sales, use, excise, and value-added taxes, or taxes of a similar nature imposed by the United States, any state or local government, or taxing authority, on all goods and services provided by Vertex to Wichita under each such SOW. Wichita will pay invoiced amounts within thirty (30) days of the date of each such invoice. Amounts not paid in accordance with the foregoing shall accrue interest at the lower of (i) the rate of one and one half percent (1.5%) per month, or (ii) the highest rate permitted by law, until paid in full.
- 1.5 (b) Each SOW will specify the deliverables to be provided by Vertex under such SOW. When deemed complete by Vertex, Vertex will produce final deliverables for Wichita's review and approval. Acceptance or rejection of deliverables must occur by Wichita on the attached Appendix A Deliverable Acceptance Form, within seven (7) business days. If a deliverable is neither approved nor rejected within seven (7) business days, the deliverable is deemed accepted and Vertex will move forward with any subsequent deliverables and invoice for deliverables accepted or deemed accepted. Deliverables may only be rejected for cause. Rejection for cause may be made if such deliverable does not substantially comply with any material specifications regarding such deliverable contained in this Agreement or an SOW. If a deliverable is rejected, a specific description of why it was rejected must be provided. Vertex will generally resubmit deliverables within ten (10) business days or a timeframe otherwise agreed to by Wichita and Vertex. The Services to be performed under any SOW shall be complete upon the delivery and acceptance (or deemed acceptance) of all deliverables listed in such SOW. If Wichita desires a change to any deliverable prior to or following



acceptance, whether such deliverable was explicitly accepted by Wichita or deemed accepted as set forth above, it will be deemed outside the scope of the applicable SOW and re-priced accordingly, if applicable, at Vertex's discretion. Should any term contained within a SOW conflict with those set out in this Letter Agreement then the terms of that SOW shall take precedence.

2. (a) This Letter Agreement is effective as of the Effective Date set forth above and shall continue in effect until terminated by either Party upon thirty (30) days prior written notice (the "Term"). Termination of this Letter Agreement shall not terminate any SOW outstanding hereunder, which SOW(s) shall continue to be governed by the terms of this Letter Agreement notwithstanding such termination, unless such SOW(s) is otherwise terminated in accordance with this Letter Agreement.

(b) Either Party may terminate any SOW hereunder in the event the other Party materially breaches any of its obligations (including for the avoidance of doubt a failure to pay any undisputed sums in full) under such SOW and fails to cure such breach within thirty (30) days after receipt of written notice specifying the alleged breach. In the event of such termination and subject to the intellectual property provisions set forth below in Section 4 and the confidentiality obligations set forth in Section 3, Vertex shall deliver all in-progress work and Wichita shall pay Vertex for the Services performed prior to such termination on a prorated basis.

3. All confidential information disclosed by either Wichita or Vertex as a "Disclosing Party" to the other Party as a "Receiving Party" or otherwise learned by the Receiving Party in connection with performance of the Services hereunder ("Confidential Information") shall be treated by Receiving Party as confidential information of the Disclosing Party. The Confidential Information includes, but is not limited to, personal, consumer, customer, Client, or employee information; business plans, marketing information, cost estimates, forecasts, bid and proposal data, or financial data; or formulae, products, processes, procedures, programs, inventions, systems, or designs of the Disclosing Party. The Receiving Party acknowledges that all Confidential Information remains the property of Disclosing Party. The Receiving Party agrees not to use any Confidential Information for any purpose except pursuant to this Agreement. The Receiving Party shall keep all Confidential Information in confidence and shall not disclose any Confidential Information to any third party. Such obligations do not apply to: (i) information which is or hereafter becomes generally known to the public without disclosure by Receiving Party; (ii) information that is hereafter furnished to the Receiving Party by a third party without restriction on disclosure; (iii) information that was already rightfully known to the Receiving Party prior to being disclosed by or obtained from the Disclosing Party, as evidenced by written records kept in the ordinary course of business or by proof of actual use by the Receiving Party; (iv) information that is independently developed by a Party without use of the other Party's Confidential Information; or (v) is required to be

disclosed by law or by any regulatory authority provided that the Receiving Party informs the Disclosing Party in advance of the circumstances of the disclosure and exactly what is required to be disclosed and obtains confidentiality undertakings in respect of the Confidential Information disclosed within five (5) days following the earlier of the request of the Disclosing Party or the expiration or termination of this Letter Agreement. The Receiving Party shall, at the Disclosing Party's option, upon request, or upon the termination or expiration of this Letter Agreement or the applicable SOW return to the Disclosing Party or destroy all of the Disclosing Party's Confidential Information and all related documents and materials.

4. (a) Vertex does not convey nor does Wichita obtain any right, title or interest in or to (i) the programs, systems, data, tools, methods, materials, processes, know-how, trade secrets or other intellectual property of Vertex, and, related documentation, existing on the Effective Date of this Letter Agreement, including any Vertex IP used by Vertex in connection with its performance of this Letter Agreement or any SOW, (ii) any modifications, improvements, enhancements or new versions of any Vertex IP developed by Vertex or its employees or contractors (either solely or jointly with employees of Wichita or others), in connection with Vertex's performance of this Letter Agreement or, otherwise, after the date hereof; and (iii) any inventions, discoveries, ideas, concepts, know-how, or techniques that are developed at least in part by Vertex's employees or contractors in connection with their performance under this Letter Agreement (collectively, "Vertex IP"). Vertex shall have the right to retain and use any multi-purpose libraries or routines, or development tools that may be provided or used in connection with the Services and any general skills, ideas, concepts, know-how and expertise that Vertex learns, obtains, uses, develops or creates in rendering the Services for Wichita, insofar as such are of general applicability and are acquired without disclosure of any proprietary or confidential information of Wichita.

(b) Subject to the foregoing paragraph and to the confidentiality obligations in Section 3 above, Vertex grants to Wichita during the Term of this Letter Agreement and any SOW, a royalty-free, non-exclusive, right to access, operate and use the Vertex IP solely as necessary for Wichita's internal business purposes. Wichita shall not use the Vertex IP for any other purpose.

5. Neither Party shall (i) use the names(s), trademark(s), or trade name(s) (whether registered or not) of the other Party or (ii) publicly refer to the other Party or the existence of this Letter Agreement in publicity releases, promotional materials, business plans, investment memoranda, announcements, or advertising or in any other manner, without securing the other Party's prior written approval. Notwithstanding the foregoing, Vertex may list the City as a client and describe the general nature of the Services performed for the City.

6. Each Party shall indemnify, defend and hold harmless the other Party and its affiliates, and their respective managers, officers, directors, employees, agents, and representatives from and against any third party claims, demands, loss, damage or expenses (including counsel fees and court costs) relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the gross negligence or willful misconduct of the indemnifying Party, its personnel or agents during the Term of this Letter Agreement or any SOW.

7. (a) OTHER THAN AS EXPRESSLY PROVIDED IN THIS LETTER AGREEMENT OR ANY SOW HEREUNDER, VERTEX DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR THAT THE SERVICES OR DELIVERABLES WILL BE ERROR-FREE. WICHITA ASSUMES ALL RISKS ASSOCIATED WITH THIS DISCLAIMER AND THE RATES AND FEES HAVE BEEN NEGOTIATED TO REFLECT THIS ALLOCATION OF RISK. NO VERTEX EMPLOYEE OR OTHER REPRESENTATIVE HAS ANY AUTHORITY TO MAKE ANY WARRANTIES UNDER THIS LETTER AGREEMENT OR ANY SOW.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN: (I) VERTEX SHALL NOT BE LIABLE TO WICHITA FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, LOSS OF DATA OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATED TO THIS LETTER AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY AND EVEN IF VERTEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) IN NO EVENT WILL THE TOTAL LIABILITY OF VERTEX HEREUNDER (WHETHER UNDER AN INDEMNITY OR OTHERWISE) EXCEED THE TOTAL FEES PAID TO VERTEX BY WICHITA PURSUANT TO THE SOW UNDER WHICH SUCH LIABILITY AROSE.

(c) A PARTY MUST FILE ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THIS LETTER AGREEMENT WITHIN TWO (2) YEARS AFTER THE CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.

8. The validity, interpretation, enforcement and construction of this Letter Agreement shall be governed by, and construed in accordance with, the internal substantive Laws of the State of Texas, without regard to its conflicts of laws provisions.

9. This Letter Agreement represents and constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, proposals, representations, agreements, commitments, or understandings, written or oral, with respect to the subject matters thereof. Any future or subsequent proposal, representation, agreement, commitment, understanding or waiver shall be effective or binding only if in writing and executed by an authorized representative of the Party against whom it is sought to be enforced.
10. This Letter Agreement is solely for the benefit of the Parties hereto, and no third party shall be entitled to rely upon any provision hereof, claim any benefit hereby or enforce any right hereunder.
11. Neither Party may assign this Letter Agreement without the prior written consent of the other, except that either Party may assign its rights and obligations under the Letter Agreement without the approval of the other (i) to an entity which acquires all or substantially all of the assets of the assigning Party; or (ii) to any subsidiary or affiliate; or (iii) to any successor in a divestiture, merger, or acquisition involving the assigning Party.
12. This Letter Agreement may be executed in multiple counterparts and by different Parties on separate counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute but one and the same agreement. Each Party hereto shall be authorized to rely upon the signatures on this Letter Agreement that are delivered by facsimile or other reliable electronic means as constituting a duly authorized, executed original.
13. The following provisions of this Letter Agreement shall survive any expiration or termination of this Letter Agreement, together with all obligations or rights that exist as a result of an event or the failure of an event prior to or at the time of expiration or termination of this Letter Agreement, paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 13 and 15.
14. Neither Party shall be liable to the other for any breach or delay in the performance of its obligations under this Letter Agreement or any SOW (except a failure to pay the Fees) to the extent that the breach or delay is caused, wholly or partly, by circumstances beyond the reasonable control of that Party, including without prejudice to the generality of the foregoing: any act of God, flood, lightning or fire, act or omission of Government, authorities, public telecommunications operators or other competent authorities, industrial dispute, war, terrorism, military operations; riot, limitations in the ability of third parties (a "Force Majeure Event")

## 15. CONTRACT & RELATIONSHIP MANAGEMENT

### a) Relationship Management

The Parties will each appoint appropriate persons to manage the relationship between The City and Vertex as outlined in the Statement of Work. The Parties will promptly notify the other Party of such appointment and any changes related thereto.

### b) Dispute Resolution

In the event a dispute arises out of or in connection with this Agreement the Parties will follow the correction and resolution procedure set out below:

- 1) The aggrieved Party will advise the other Party in writing of the alleged dispute or breach. The Party allegedly in breach will investigate and provide a written report to the other Party, within fifteen (15) business days of receiving the notice alleging breach given to the effect that: (a) the investigation reveals that the alleged breach was not committed, (b) the breach has been cured, or (c) the breach remains uncured.
- 2) If the Party alleging the breach is not satisfied that the other Party is not, or is no longer, in breach or wishes to pursue the dispute, then that Party will immediately advise the other Party in writing it wishes to escalate the dispute.
- 3) Each Party will, within ten (10) business days, submit a written report on the facts of the dispute, any relevant provisions of this Agreement, and any other relevant information: on behalf of Vertex, to the General Manager of Vertex's Business Unit, or as otherwise designated by Vertex; on behalf of The City, to such executive level person as designated by The City.
- 4) Upon receiving the reports in the previous step, such executives will jointly and diligently work together in good faith to resolve the dispute within ten (10) business days of receipt of the reports.
- 5) If the executives fail to resolve the dispute then the Party alleging breach may elect to (a) abandon its claim in respect of the alleged breach, or (b) with or without the other Party's consent, submit the dispute to Arbitration in accordance with Section 15.c, or if permitted by Section 15.c3, pursue other remedies available at law. Nothing in this section shall limit a Party's rights to terminate this Agreement in accordance with Section 2.b.

If the foregoing meets with your approval, please so indicate by signing two copies of this Letter Agreement in the space set forth below and returning one of the signed copies to the undersigned at the address and fax number set forth below, whereupon this Letter Agreement shall constitute our agreement to the terms and provisions set forth herein.

ACCEPTED AND AGREED:

City of Wichita

Vertex Business Services LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notices:

Address for Notices:  
250 E. Arapaho Rd. Ste. 100  
Richardson, TX 75081  
Attn: CFO

or other instrument approved as in form

13th day of January, 2011  
G. E. Hartley, Jr.  
City Attorney

Exhibit A  
SOW

Consulting - NA Statement of Work (SOW) - Schedule A

**POSITIVELY  
CHARGED**

<b>CUSTOMER:</b>	City of Wichita Public Utility ("the Customer")
<b>PROVIDER:</b>	Vertex Data Utility Services LLC ("Vertex")
<b>COMMENCEMENT DATE:</b>	January 12, 2011
<b>SOW Duration:</b>	Nine Hundred Sixty (960) Project Consulting Hours from Actual Commencement Date

SERVICES	Services
1	<ul style="list-style-type: none"> <li>Design a new quality assurance testing environment for the City using Vertex standards of performance and application outsourcing expertise.</li> <li>Create a procedures guide for the testing strategy, necessary documentation, and application to reduce future system overhead of application code.</li> <li>Development of code application procedural guide and documentation requirements for the correct auditing of application changes/enhancements.</li> </ul>
1	<ul style="list-style-type: none"> <li>Create a Code Application Strategy document which encompasses detailed functional Information regarding proposed application changes, timeline for test execution and dependencies and proposed staffing model.</li> </ul>
2	<ul style="list-style-type: none"> <li>Planning and execution of Unit Testing for backlog of application objects.</li> </ul>
2	<ul style="list-style-type: none"> <li>Creation of a technical design document for the future state, "to Be" information technology structure.</li> </ul>
2	<ul style="list-style-type: none"> <li>Support for subsequent testing phases including integration and site acceptance testing.</li> </ul>
2	<ul style="list-style-type: none"> <li>Utilizing the Code Application strategy document and staffing model Vertex will:                             <ul style="list-style-type: none"> <li>Create test plans</li> <li>Initiate testing of backlogged application objects</li> <li>Provide unit testing results</li> <li>Create documentation</li> <li>Create information on proposed resolution (rejection, promotion procedure, etc.)</li> </ul> </li> </ul>

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Consulting - NA Statement of Work (SOW)- Schedule A

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PERSONNEL		
In performing the Services Vertex will use the following personnel:		
Name	Role	Contact Details
Doug Wilson	Account Manager	Doug.Wilson@vertexna.com
Annette Bennett	Project Manager	Annette.Bennett@vertexna.com
Velimira Jordanova	Testing Lead	Velimira.Jordanova@vertexna.com
Naeem Rehman	Technical Lead	Naeem.Rehman@vertexna.com

CLIENT INPUTS
<p>The City will create or will allow Vertex to have the access to create a quality assurance testing environment per the technical specifications of the Vertex staff barring any hardware or security restrictions. The City will turn-over a listing of all back-logged code and documentation regarding code non-conformance to requirements for the successful unit testing and cross-reference any object dependency as identified by the CIS vendor.</p> <p>The City and Vertex agree to respond to all inquiries and open items in a timely manner. Unless noted differently, normally all items will be responded to by the end of the following business day.</p> <p>The City is responsible for ensuring Vertex can connect to environments required for this engagement.</p> <p>The City is responsible for the co-ordination and approval of activities and plans to migrate the new code into the production environment.</p> <p>Should there be a need for Vertex resource(s) to work at the City's site, the request for travel must be approved by the appropriate authorized resource at the City in advance. All travel costs are billable by Vertex to the City at the time incurred and re-imbursement of travel expenses is to be paid immediately (Net 30 days)</p> <p>Additional Project Request changes or required additional hours will be handled through the Change Control Process.</p>

**CHARGES**

# Consulting - NA Statement of Work (SOW)- Schedule A

## Fixed Price

The Fixed Price for the Nine Hundred Sixty (960) hours of Consulting Services shall be \$142,400 plus any sales or use tax and any expenses. This fixed fee is inclusive of 4 round-trip on-site visits. Additional on-site requirements will be handled through the change control process.

Vertex shall only invoice upon Wichita's approval of the deliverables as noted in the project milestones below. An email message will be sent by the Vertex Project Manager requesting acknowledgement that a project milestone has been achieved. The Wichita Project Manager's email response confirming achievement of the milestone will serve as authorization for Vertex to invoice. If an email request by Vertex for acknowledgement of a milestone has not been responded to by Wichita within 7 business days of the email sent date and received, then both parties agree that the project milestone shall be considered achieved, accepted, completed and billable.

Payment terms shall be in accordance with the letter of agreement executed between Vertex and Wichita. Once Wichita has received a correct invoice, Wichita will provide payment within thirty (30) days.

## Project Milestones

Assumes a 3/1/2011 start date. Estimated dates may be achieved sooner with additional resources.

No.	Milestone	% of SOW payable	Initial Estimated Date
	Completion of Wichita's new development environment as well as testing plan for back-log code.	50%	4/01/2011
	Completion of Test Execution and Support - identified as unit testing in development environment.	50%	7/1/2011

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CONTRACT MANAGERS	
Vertex	Customer
Peter Weidenbruch	

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# Consulting - NA Statement of Work (SOW)- Schedule A


## SCOPE OF ENGAGEMENT

Having previously provided consulting services to the City, Vertex is acutely aware of the difficulties that the City is encountering while running the Ventyx Customer Suite application in its current configuration. There are a number of challenges and issues that we will address, fix and / or provide as part of the scope of this SOW for the City to be on the road to application stability; such challenges are:

- 'Freezing' screens within the application that are causing inconsistent performance within the contact center
- Poor performance of some core batch processes which push into prime shift, further deteriorating the response time of the application during call center hours.
- Backlog of untested code related to performance issues, system enhancements, custom programming needed to meet City business requirements which has been built in an iterative fashion.
- Lack of a clean testing environment built to test performance and/or corrective code.

Vertex will provide the City with our extensive QIS capabilities and dedicated performance throughout our relationship. As noted in the phases above, Vertex will provide a detailed document outlining key functional information including application changes, timeline for test execution and dependencies and proposed staffing model, including providing detail regarding the planning and execution of Unit Testing and the ongoing support for subsequent testing phases which would include integration and Site Acceptance Testing. Vertex will also develop an in depth guide to outline and include code application procedures and requirements for correct auditing of application charges and enhancements.

To address the issues of frozen screens, users will be shadowed and incidents of freezing will be documented and a pattern determined, if possible, to allow Vertex to correct the instances and help overall performance of the application. Identification of a pattern is required, and the settings of the database and application server will be reviewed, to enable the correction of the slow or inconsistent behavior of the application.

Poor performance of core batch processes can be related to a number of issues including configuration of the database, the application server, individual code objects, and infrastructure. To identify the source of these issues, log and .trc files will be examined in a newly developed testing environment to inform Vertex about where the corrections should be placed to mitigate the inconsistencies. One option for the City may be the development of a report server. By moving financial reports to a report environment, leaving the production environment to process only core batch elements, the prime call center hours can be less impacted. Finally, a report server environment can be a usable hot backup site available to the City in the event of failure. Provisioning of such a server is not presently in scope of this SOW.

With the development of a new testing environment, however, Vertex will make adjustments to database parameters, structuring it against what we consider Customer Suite best practice. A full analysis of the occurrences of the 'freezing' screen will take place against the existing production system to help us determine and fix the root cause of the repeatable poor performance the City is experiencing. In that environment, Vertex will develop a strategic method for backlog testing. As testing objects are either passed through or failed, code can be moved into production and the code adversely impacting

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Consulting - NA Statement of Work (SOW)- Schedule A

performance will be eliminated.

Vertex will create and provide detail of the developmental environment that will be used prior to execution of phase two. If Vertex is authorized to apply code to the local environment, Vertex can, as additional scope, execute if the City Technical Staff are not available to do so. We will provide code quality for promotion and restrictions to hardware/storage and processing discovered during environmental creation.

This Statement of Work (SOW) is attached to and incorporated by reference and governed by the terms and conditions of the Letter Agreement by and between Vertex Business Services LLC and The City of Wichita, dated January 12<sup>th</sup>, 2011.

AUTHORISED SIGNATURE	
For and on behalf of the Customer	For and on behalf of Vertex Business Services LLC
Signature	Signature
Name	Name
Title	Title
Date	Date
CUSTOMER	VERTEX

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole

or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council Members

**SUBJECT:** Electrical Service Design for Lawrence-Dumont Stadium (District IV)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the Contract.

**Background:** Lawrence-Dumont Stadium (LDS) is a historic baseball stadium and home to the Wichita Wingnuts, a member of the American Association of Independent Baseball. The Stadium is one of the oldest facilities for professional baseball still in use in the United States.

Considerable work has been done over the years to update the stadium and keep it functionally current with newer ballparks found elsewhere. The current electrical main service feeding the facility is the original service and equipment, and has become very unreliable resulting in power failures during events, as well as significant maintenance costs. Some of the parts and equipment incorporated into the service are no longer readily available, resulting in delays and long lead times in the event a repair is necessary. On May 18, 2010, the City Council approved a resolution that included the design and replacement of the main electrical service to the LDS facility.

**Analysis:** On November 12, 2010, staff received responses to a Request for Proposal from four prospective design firms. The Staff Screening and Selection Committee conducted interviews with three of the firms, Malone Finkle Eckhardt & Colling, Inc., Law/Kingdon Architecture, and Morrow Engineering. Malone Finkle Eckhardt & Colling, Inc. of Overland Park, Kansas was chosen based on their extensive experience with electrical design of athletic facilities.

**Financial Considerations:** The approved resolution included \$380,000 for electrical service design and replacement. The contract amount for this design work is \$43,220.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by maintaining and optimizing public facilities and assets.

**Legal Considerations:** The Law Department has approved the contract as to form.

**Recommendation/Action:** It is recommended that the City Council approve the contract, and authorize the necessary signatures.

**Attachment:** Contract.



City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Change Order No. 1: Waterline for Bentley Tie-In  
(All Districts)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

.....

**Recommendation:** Approve the change order.

**Background:** On October 19, 2010, the City Council approved a contract with Mies Construction, Inc. to construct a waterline as part of the Aquifer Storage and Recharge (ASR) project. The line will replace an existing 60-year old line and connect four existing water wells to the ASR system to Wichita. It also fulfills a critical need to supply water to the City of Bentley and for testing the new ASR treatment plant in the coming weeks, before the plant is put into full capacity service.

A part of the work is the abandonment of an old water line that connected the four wells to the City's current system. The original plan was to take the four wells off line until a flow control structure could be completed in May. However, the four wells need to stay temporarily connected to the entire system to ensure adequate water supply for Wichita, as well as the City of Bentley. This can be accomplished by temporarily connecting the new line to the existing waterline that was originally planned to be abandoned. Work is being advanced to ensure non-interruption of service. A change order has been prepared for the cost of the additional work.

**Analysis:** The work consists of connecting the new 24" waterline to the existing 20" diagonal transmission line. In addition, it is recommended that thrust blocks be installed at all four well locations to laterally support the pipe exiting the structures.

**Financial Considerations:** The total cost of the additional work is \$28,013, with the total paid by the Water Utility. The original contract amount is \$527,983. This change order represents 5.31% of the original contract amount. Funding is available within the existing project budget.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by providing a needed water supply.

**Legal Considerations:** The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

**Recommendation/Action:** It is recommended that the City Council approve the change order and authorize the necessary signatures.

**Attachments:** Change order.



PUBLIC WORKS-ENGINEERING

December 9, 2010  
**CHANGE ORDER**

To: Mies Construction, Inc.

Project: WM Improvements, Bentley Tie-In  
(ASR)

Change Order No.: 1

Project No.: 448-90498

Purchase Order No.: 30855

OCA No.: 633972

CHARGE TO OCA No.: 633972

PPN: 788014

Please perform the following extra work at a cost not to exceed **\$28,012.50**

**Additional Work:** Connect new 24" waterline to existing 20" diagonal transmission line. Provide thrust blacks at 4 well locations. Repair two driveways with asphalt and underrun bid items for rock driveway crossings.

**Reason for Additional Work:** A temporary connection of the Bentley line to a 20" line scheduled for abandonment is recommended by City Staff. The temporary connection is needed at this time to provide redundancy to water service to the City and to also provide flexibility in the number of wells on the system that can be taken off-line to facilitate construction of the ASR pipeline network. During excavations, old unrestrained reducers were discovered at the wellhouse connections. Engineering recommends adding thrust blocks to laterally support the new restraint joint pipe to the wellhouse connections at 4 locations.

Item	Negot'd/Bid	Qty	Unit Price	Extension
ADD Lump Sum Bit Items (633972)				
24" DICTL Pipe	Negot'd	4 lf @	65.00 =	\$260.00
20" DICTL Pipe	Negot'd	12 lf @	60.00 =	\$720.00
24" Tie In w/24" Butterfly Valve	Negot'd	1 ls @	12,500.00 =	\$12,500.00
Install 24"x24" CMJ Tee (City Provided)	Negot'd	1 ea @	250.00 =	\$250.00
Install 24"x20" MJ Reducer (City Provided)	Negot'd	1 ea @	250.00 =	\$250.00
20" CIMJ 45 Bend	Negot'd	1 ea @	1,050.00 =	\$1,050.00
11 1/4 CIMJ 45 Bend	Negot'd	2 ea @	1,025.00 =	\$2,050.00
DICTL x CI Repair Coupler	Negot'd	1 ea @	1,050.00 =	\$1,050.00
Re-Mobilization (Spring 2011)	Negot'd	1 ls @	850.00 =	\$850.00
Remove/Abandon Exist. 20" in Easemet.	Negot'd	1 ls @	2,800.00 =	\$2,800.00
24" CIMJ Cap	Negot'd	1ea @	750.00 =	\$750.00
Remove Temp. Fittings & Salvage to City	Negot'd	1 ls @	200.00 =	\$200.00
Asphalt Drive Repair (71 lf)	Negot'd	1 ls @	4,615.00 =	\$4,615.00
Thrust Blocks (Wellhouse)	Negot'd	4 ea @	300.00 =	\$1,200.00
Underrun Lump Sum Bit Items (633972)	Negot'd			
Gravel Steels/Drives Rem & Replaced	Bid	(71 lf@)	7.50 =	(532.50)
<b>Total</b>				<b>= \$28,012.50</b>

CIP Budget Amount: \$44,051,544.00

Original Contract Amt.: \$527,982.90

Consultant: R&B

Current CO Amt.: \$28,012.50

**Exp. & Encum. To Date: \$36,952,386.30**

**Amt. of Previous CO's: \$0.00**

**CO Amount: \$28,012.50**

**Total of All CO's: \$28,012.50**

**Unencum. Bal. After CO: \$7,071,155.20**

**% of Orig. Contract / 25% Max.: 5.31%**

**Adjusted Contract Amt.: \$555,995.40**

**Recommended By:**

\_\_\_\_\_  
Greg Baalman, P.E.  
Construction Engineer

\_\_\_\_\_  
Date

**Approved:**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

**Approved:**

\_\_\_\_\_  
Jim Armour, P.E.  
City Engineer,  
Co-Director of Public Works & Utilities

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law

\_\_\_\_\_  
Date

**By Order of the City Council:**

\_\_\_\_\_  
Carl Brewer  
Mayor

\_\_\_\_\_  
Date

**Attest:** \_\_\_\_\_  
City Clerk

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Change Order No. 2: Hydraulic Improvement, between Harry and Kellogg  
(District I)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the change order.

**Background:** On January 12, 2010, the City Council approved a construction contract with Pavers, Inc. to improve Hydraulic, between Harry and Kellogg. The proposed alignment of a storm sewer would have damaged over 30 mature trees. A number of additional work items are associated with the revised alignment to preserve the trees and should be addressed as a change order. An old, unmapped 20' by 16' storm sewer vault was uncovered that was located over an existing sanitary sewer. The plan to replace the sewer had to be completely altered to avoid the cost of reconstructing the storm sewer vault.

**Analysis:** The original storm sewer pipe alignment would have missed the trees, but the trenching would have damaged the root systems. The additional work includes new manholes, drainage inlets, and relocation of a waterline. An itemized list of the work items is included in the attached change order document.

**Financial Considerations:** The total cost of the additional work is \$60,160, \$29,425 paid by City General Obligation bonds, \$29,206 by the Sanitary Sewer Utility and \$1,529 by the Water Utility. The original contract amount is \$3,107,791. This change order plus a previous change order represents 2% of the original contract amount. Funding is available within the existing project budget.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by improving a major traffic corridor.

**Legal Considerations:** The Law Department has approved the change order as to legal form. The change order amount is within the 25% of the construction contract cost limit set by City Council policy.

**Recommendation/Action:** It is recommended that the City Council approve the change order and authorize the necessary signatures.

**Attachments:** Change order.



**To:** Pavers Inc.  
**Change Order No.:** 2  
**Purchase Order No.:** 931207  
**CHARGE TO OCA No.:** 991304 = \$29,425.08  
620546 = \$29,206.16  
636220 = \$ 1,529.00

**Project:** Hydraulic, Harry to Kellogg (ARRA)  
**Project No.:** 87N-0503-01\_472-84848  
**OCA No.:** 991304/620546/636220  
**PPN:** NA/669664/779609

**Please perform the following extra work at a cost not to exceed \$60,160.24**

**Additional Work:** Relocate Storm Sewer Line 3 from approximate stations 11+21 to 26+86, add 6 Type "P" Manholes and 1 new special Manhole plug existing block outs in storm inlet manholes, cut new opening for realigned storm in inlet manholes on revised plan sheets 35-37. Relocate Line 1C 8" Waterline in order to realign Storm Sewer Line 3 at approximate Station 21+75. Add 2 inlet tops to Storm Inlets to be rehabbed at Indianapolis. Add 28 additional calendar days for the manufacture and installation of storm sewer Manholes needed for realignment. Sanitary Sewer Line 1 was manually cleaned of debris and then lined with Cast In Place Pipe (CIPP). The proposed manhole connecting SWS line 5 & 4 was set over the existing unknown SWS line and SWS line 5 was broken in and connected where the brick arch and the unknown vault connect using the vault as the entry point for cleaning SWS line 5. Add 35 additional calendar days for the cleaning of existing sewer and installation of CIPP sewer. In order to remove and replace Sanitary Sewer line 3 it was also required to remove and replace the unknown encased storm sewer above Sanitary Sewer line 3. Add 2 additional calendar days for the replacement of existing line.

**Reason for Additional Work:** Storm Sewer Line 3 was realigned in order to preserve over 30 mature trees lining Hydraulic from Harry to Lincoln. Design location would have missed the trees but actual construction limits could have caused irreparable damage to the root system. In order to realign the storm sewer, MHs were added in the street and the 8" water line at Park Street needs to be relocated. The 4 area inlets to be rehabbed at both Lincoln and Indianapolis Street required 2 new precast Inlet Tops at each location. An unknown large Storm Sewer vault approximately 20' x 16' was located over the top of the Sanitary Sewer line 1. The scope of work required open cut remove and replace sewer and had to be completely altered so the vault was not required to be reconstructed. Along with the unknown storm sewer vault, an additional storm pipe was located parallel to the 4'x4' brick arch sewer. This line prevented setting the proposed manhole connecting SWS line 5 & 4 (Sheet 38, BL Station 36+56). The existing 36" Storm Sewer over Sanitary Sewer line 3 (Sheet 3 of 3 SS) was unknowingly encased with concrete around both the storm sewer and sanitary. In order to remove and replace Sanitary Sewer line 3 it was also required to remove and replace the encased storm sewer above Sanitary Sewer line 3.

Item	Negot'd/Bid	Qty	Unit Price	Extension
<b>Drainage Items (Participating) (991304)</b>				
5' P MH w/ Plug Inlet (Part.)	Negot'd	6 Ea @	\$ 2,671.00 =	\$16,026.00
Special MH (Part.)	Negot'd	1 Ea @	\$ 3,656.00 =	\$3,656.00
Storm Sewer 15" (RCP)(Part.)	Negot'd	6 lf @	\$ 27.27 =	\$ 163.62
4 Inlet Tops (Part.)	Negot'd	4 Ea @	\$ 800.00 =	\$3,200.00
<b>Water Improvements (Non-Participating) (636220)</b>				
Relocate 8" water line (Non)	Negot'd	1 Ea @	\$ 1,529.00 =	\$1,529.00
<b>Sanitary Sewer Improvements (Non-Participating) (620546)</b>				
CIPP Lined Sewer	Negot'd	1 LS @	\$29,206.16 =	\$29,206.16
<b>Drainage Items (Participating) (991304)</b>				
Add Connect to Storm	Negot'd	1 LS @	\$500.00 =	\$500.00
<b>Drainage Items (Non-Participating) (991304)</b>				
Rem&Repl Encased SWS	Negot'd	1 LS @	\$ 5,879.46 =	\$5,879.46
<b>TOTAL:</b>				<b>\$60,160.24</b>

CIP Budget Amount: \$4,170,000.00 (991304);  
\$166,000.00 (620546); \$540,000.00 (636220)  
Consultant: Baughman  
**Exp. & Encum. To Date: \$2,243,304.37 (991304);**  
**\$105,627.05 (620546); \$422,104.81 (636220)**  
**CO Amount: \$60,160.24**  
**Unencum. Bal. After CO: \$1,897,270.55 (991304);**  
**\$31,166.79 (620546); \$116,366.19 (636220)**

Original Contract Amt.: \$3,107,791.00

Current CO Amt.: \$60,160.24  
**Amt. of Previous CO's: \$2,000.00**  
**Total of All CO's: \$62,160.24**  
**% of Orig. Contract / 25% Max.: 2%**  
**\*Adjusted Contract Amt.: \$3,169,951.24**

**Recommended By:** James Wagner, P.E.  
**Approved:**

\_\_\_\_\_  
Greg Baalman, P.E.  
Construction Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jim Armour, P.E.  
City Engineer,  
Co-Director of Public Works & Utilities

\_\_\_\_\_  
Date

**Approved:**

**Approved as to Form:**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law

\_\_\_\_\_  
Date

**By Order of the City Council:**

\_\_\_\_\_  
Carl Brewer  
Mayor

\_\_\_\_\_  
Date

**Attest:** \_\_\_\_\_  
City Clerk

**Approved:**

\_\_\_\_\_

KDOT

Date

**CITY OF WICHITA**  
**City Council Meeting**  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Acquisition of a Temporary Easement at 3220 South Seneca for the Seneca, 31<sup>st</sup> Street South to Interstate 235 Road Improvement Project (District IV)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the acquisition.

**Background:** On April 6, 2010, the City Council approved the design concept and the funding to acquire right-of-way for the Seneca Street improvement project between 31<sup>st</sup> Street South and Interstate 235. The roadway will be widened to five lanes with four through lanes and a center, two-way turn lane. There will be new sidewalks on each side of Seneca. The traffic signals and the drainage system will be upgraded during construction. The property at 3220 South Seneca is improved with a retail business. It is necessary to obtain a temporary easement along the property line and at the two driveways to accommodate the installation of the sidewalk and matching the grade of the driveway approach to the road. The proposed temporary easement consists of 1,375 square feet.

**Analysis:** The owner agreed to accept the estimated appraised value of \$500, or \$0.36 per square foot.

**Financial Considerations:** The funding source is General Obligations Bonds. A budget of \$750 is requested. This includes \$500 for the acquisition and \$250 for closing costs and related charges.

**Goal Impact:** The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

**Legal Considerations:** The Law Department has approved the real estate purchase contract as to form.

**Recommendation/Action:** It is recommended that the City Council; 1) Accept the agreement; 2) Approve the budget and 3) Authorize the necessary signatures.

**Attachments:** Aerial map, tract map and real estate purchase contract.



## REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between Ban Nguyen, party of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer temporary easement for construction

A tract of land lying in the Northwest Quarter of Section 8, Township 28 South, Range 1 East of the 6<sup>th</sup> P.M., Wichita, Sedgwick County, KS more particularly described as follows:

The South 25 feet of the West 20 feet of Lot 1, Cumley's Addition, SG CO, KS; ALONG WITH the West 5 feet of the North 55 feet of the South 80 feet of said Lot 1; ALONG WITH the North 30 feet of the west 20 feet of said Lot 1.

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of Five Hundred Dollars (\$500) in the manner following to-wit: cash at closing.
3. This space intentionally left blank.
4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the closing date. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.
6. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear accepted.
7. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.
8. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before December 31, 2010.
9. Possession to be given to Buyer at closing
10. Closing costs shall be paid 100% by Buyer and 0% by Seller.

11. Site Assessment

A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**SELLER:**

  
\_\_\_\_\_  
Ban Nguyen

**BUYER:**

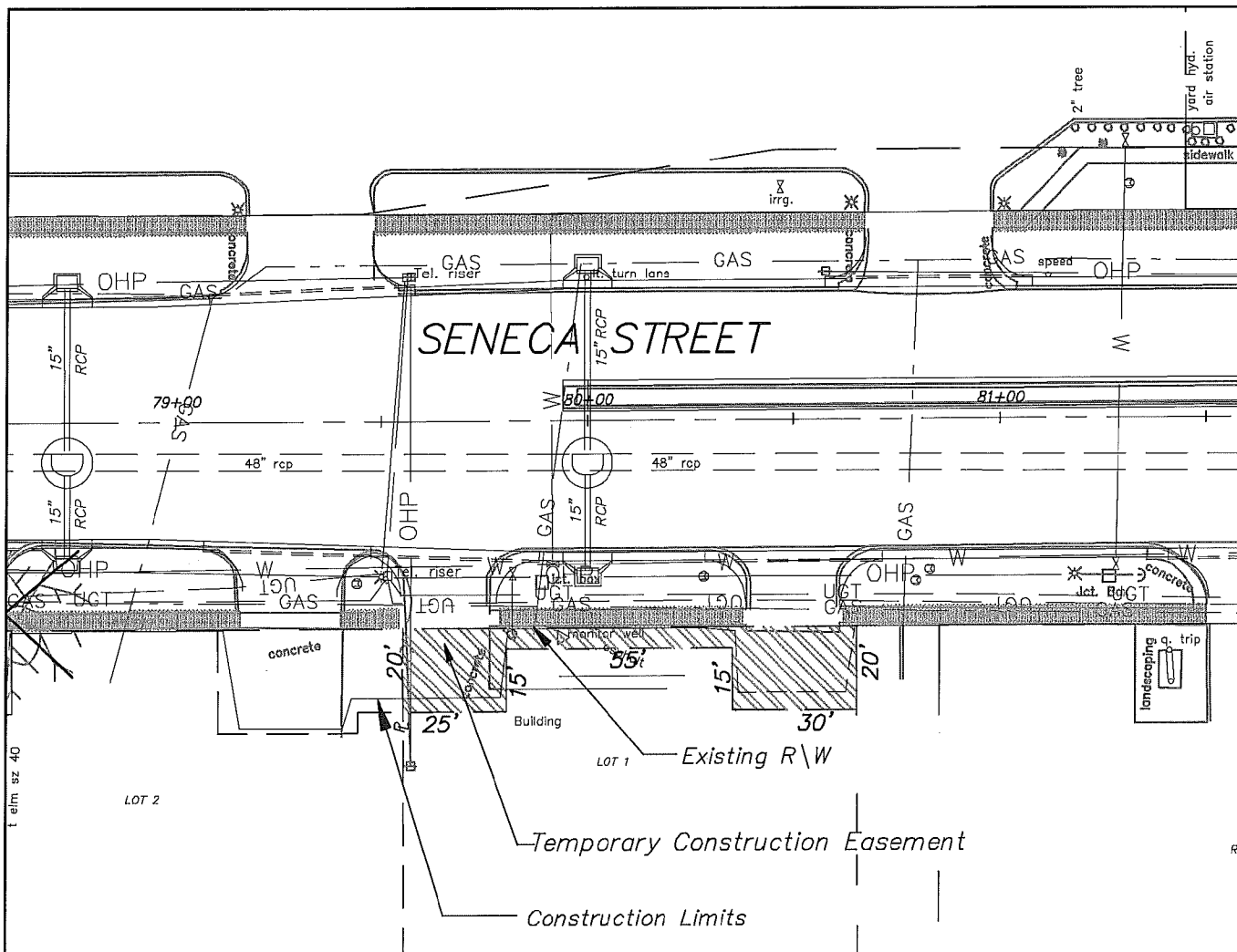
\_\_\_\_\_  
Carl Brewer, Mayor

**ATTEST:**


\_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law



Ban Nguyen  
3220 S SENECA

 Temporary Construction Easement

*Proposed Temporary Construction Easement Legal Description:*

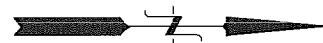
*A tract of land lying in the Northwest Quarter, Section 8, Township 28 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas more particularly described as follows:*

*The South 25 feet of the west 20 feet of Lot 1, Cumley's Addition, Sedgwick County, Kansas; ALONG WITH the West 5 feet of the North 55 feet of the South 80 feet of said Lot 1; ALONG with the North 30 feet of the west 20 feet of said Lot 1.*

**Tax Key # D 107370001**

**Proposed Right-of-way Acquisition Size: 1,375 Sq. Ft. +/-**

SENECA STREET  
I-235 TO 31st STREET  
**TRACT MAP**  
BAN NGUYEN  
SEC 8-T28S-R1E



SCALE: 1"=40'

May 03, 2010



D-107370001



Printed: 5/11/2010 12:27:32 PM

Powered By GeoSmart, Inc.



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



**CONTRACTS & AGREEMENTS  
BLANKET PURCHASE ORDERS RENEWAL OPTIONS  
JANUARY 2011**

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Asphalt (Emulsified)	1/31/2012	APAC-Kansas, Inc.	Public Works & Utilities	2/1/2010 - 1/31/2011	1 - 1 year option
Janitorial Services - Water Center, Phase II Education Building	1/31/2012	Best Corporation Inc. DBA Servicemaster by Best	Environmental Services	2/1/2010 - 1/31/2011	1 - 1 year option
Janitorial Tools	1/31/2012	Southwest Paper Company, Inc.	Various	2/1/2010 - 1/31/2011	1 - 1 year option
Liquid Polyelectrolyte (Bulk Delivery)	1/31/2012	Polydyne, Inc.	Public Works & Utilities	2/2/2010 - 1/31/2011	1 - 1 year option
Plumbing Repair Services - Commercial	1/31/2012	The Waldinger Corporation	Various	2/2/2010 - 1/31/2011	1 - 1 year option

**PROFESSIONAL CONTRACTS UNDER \$25,000  
JANUARY 2011**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
Ruggles & Bohm PA	PO130069	Engineering Consulting	17,500.00		

**ANNUAL MAINTENANCE CONTRACTS OVER \$25,000  
DIRECT PURCHASE ORDERS FOR JANUARY 2011**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
Oracle America, Inc.	DP130022	Software Maintenance/Support	\$55,680.50		
Dataedge Solutions Corp.	DP130051	Software Maintenance/Support	\$32,964.71		
The Active Network	DP130052	Software Maintenance/Support	\$28,516.69		
Dell Marketing LP	DP130062	Software Maintenance/Support	\$25,913.19		
Logic Inc.	DP130064	Software Maintenance/Support	\$27,645.00		

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Abatement of Dangerous & Unsafe Structures (Districts I, II, III, IV and VI)

**INITIATED BY:** Office of Central Inspection

**AGENDA:** Consent

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**Recommendation:** Approve the assessments and ordinances.

**Background:** The Office of Central Inspection supports neighborhood maintenance and improvement through abatement of public nuisances under Titles 18 and 20 of the City Code. State law and local ordinances allow the City to demolish or board up and secure private property that is in violation of Housing and/or Building Code standards, after proper notification of the responsible party/parties. A private contractor or City staff performs the work, and the Office of Central Inspection bills the cost to the property owner.

**Analysis:** State law and City ordinance allow placement of the demolition and board-up costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the demolition and board up abatements in question, and the Office of Central Inspection is requesting permission for the Department of Finance to process the necessary special assessments.

**Financial Considerations:** Statements of Charges will be mailed to the property owners on February 18, 2011. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The interest added to the principal amount will be determined by the rate at which the August 2010 bonds sold. The principal and interest will then be spread for one year and placed on the 2011 tax roll.

**Goal Impact:** This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods. Dangerous building condemnation actions, including demolitions and emergency property board-ups, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

**Legal Considerations:** The assessments are in accordance with City Code 18.16.070, 18.16.080 and 18.16.090.

**Recommendations/Actions:** It is recommended that the City Council approve the proposed assessments and place the ordinances on first reading.

**Attachments:** Property List – Special Assessments

<u>Tax Key #</u>	<u>PIN #</u>	<u>Location</u>		<u>Amount</u>	<u>District #</u>
C-00749-B	135774	2023 E Chisholm	demolition (condemnation)	\$6,187.00	I
C-00749	135774	2023 E Chisholm	sealing the City Sewer	\$367.50	I
C-01343-5	136696	1531 N Minnesota	sealing the City Sewer	\$367.50	I
C-01343-5	136696	1531 N Minnesota	gas services removal	\$355.27	I
B-06036-1	125348	2127 S Washington	sealing the City Sewer	\$367.50	I
C-30801	176094	2712 N Fairmount	demolition (condemnation)	\$5,518.34	I
C-30801	176094	2712 N Fairmount	sealing the City Sewer	\$367.50	I
C-20216	165808	1621 N Kenmar	demolition (condemnation)	\$4,294.51	I
C-01398-1	136866	1831 N Madison	demolition (condemnation)	\$5,579.67	I
C-08830-A2	153512	1523 N Estelle	demolition (condemnation)	\$6,830.61	I
A-01302	100569	1258 N Fairview	demolition (condemnation)	\$5,004.01	VI
C-03137	139153	1022 N Green	demolition (condemnation)	\$2,642.50	I
C-20332	165923	1557 N Oliver	demolition (condemnation)	\$4,611.50	I
C-29515	174869	2878-80 S. Davidson	demolition (condemnation)	\$10,108.00	III
B-01541	120115	1611 N Topeka	demolition (condemnation)	\$3,964.50	VI
B-01498	120071	1559 N Emporia	demolition (condemnation)	\$3,851.50	VI
C-08830-A2	153512	1523 N Estelle	gas services removal	\$355.27	I
C-20216	165808	1621 N Kenmar	gas services removal	\$355.27	I
C-01398-1	136866	1831 N Madison	gas services removal	\$355.27	I
A-01302	100569	1258 N Fairview	gas services removal	\$355.27	VI
A-01302	100569	1258 N Fairview	sealing the City Sewer	\$367.50	VI
C-55309	484698	6024 S Minneapolis	demolition (condemnation)	\$5,181.77	III
C-03055	139062	1328 N Lorraine	demolition (condemnation)	\$4,361.00	I
C-03476	139564	1429 N Poplar	emergency board-up	\$141.36	I
B-03406	122240	1105 N Hydraulic	emergency board-up	\$139.95	I
C-26450	171879	2315 S Dellrose	emergency board-up	\$113.83	I
C-00962	136094	1234 N Ash	emergency board-up	\$324.83	I
C-01525	137259	2011 E 21 <sup>st</sup> St N	emergency board-up	\$188.87	I
C-03530	139624	1446 N Estelle	emergency board-up	\$645.48	I
A-01221	100487	1304-06 N Waco	emergency board-up	\$929.12	VI
B-03643	122510	1021 N Ohio	emergency board-up	\$133.84	I
C-17321	163093	3306 Grandview	emergency board-up	\$130.97	III
D-01098	199994	421 S Richmond	emergency board-up	\$117.22	VI
D-00242	198271	207 S Sycamore	emergency board-up	\$270.12	IV
C-00147	134695	429 N Piatt	emergency board-up	\$177.30	I
C-01367-1	136739	1451 N Minnesota	emergency board-up	\$569.27	I
B-03405	122238	1103 N Hydraulic	emergency board-up	\$635.34	I
C-02605	138501	525 N Green	emergency board-up	\$244.39	I
C-30839-1	176133	2640 N Vassar	emergency board-up	\$160.20	I
C-23707	169242	2277-79 S Glendale	emergency board-up	\$819.72	III
D-56430	500282	3937 S Sabin	emergency board-up	\$202.14	IV
B-03106-1	121819	840 N Wabash	emergency board-up	\$142.44	I
C-15958	161519	1427 N Broadview	emergency board-up	\$104.94	I
C-30415	175752	8108 E Gilbert	emergency board-up	\$224.95	II
D-38914	241223	2129 S Fieldcrest	emergency board-up	\$135.01	IV
D-00796	199564	802 S Fern	emergency board-up	\$390.74	IV
A-01343	100613	1209 N Jackson	emergency board-up	\$198.01	VI
B-03510	122363	1331 N Ohio	emergency board-up	\$208.79	I
B-03382	122211	1101 N New York	emergency board-up	\$112.79	I

B-10727	130975	1421 Donnell	emergency board-up	\$105.11	III
C-00856	135947	1120-24 N Hydraulic	emergency board-up	\$700.20	I
A-02155	101555	1934 N Wellington Pl	emergency board-up	\$145.62	VI
C-00147	134695	429 N Piatt	emergency board-up	\$76.54	I
D-02045-1	201054	724 W Dayton	emergency board-up	\$76.43	I
C-30854-1	176154	2629 N Gentry	emergency board-up	\$521.44	I



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Published in the Wichita Eagle on **February 18, 2011**

**ORDINANCE NO. 48-941**

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE REMOVAL OF CERTAIN STRUCTURES, BEING DANGEROUS AND UNSAFE BUILDINGS WHICH HAVE BEEN DECLARED A NUISANCE (**BUILDING EMERGENCY BOARD-UP**) UNDER THE PROVISION OF SECTIONS 18.16.010 TO 18.16.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That the sum set opposite the following lots, herein specified, be and the same is hereby levied to pay the cost of removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance under the provisions of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas, located and situated upon the following described property:

Legal of Parcel in Benefit District	Assessment
LOT 1203 & S 1/2 LOT 1205 WACO AVE. LEWELLEN ADD.	929.12
LOTS 1110-1112 JACKSON ST. LEWELLEN'S 3RD. ADD.	198.01
LOTS 29-31 BLOCK 4 FAIRVIEW ADD.	145.62
N 10 FT LOT 19-ALL LOTS 21-23 WABASH AVE. ELLIOTT & HAMMOND'S ADD.	142.44
LOTS 48-50-52-54 GETTO NOW NEW YORK AVE. GETTO'S ADD.	112.79
LOTS 47-49 EXC BEG 69 FT ELY SW COR LOT 47 NWLY TO PT 55.8 FT E NW COR LOT 49 WLY 15.56 FT SELY TO PT 16.67 FT W OF BEG E TO BEG FOR CC-15010 PENNSYLVIA	635.34
LOTS 51-53 EXC CANAL & EXC C-15010 BEG 55.8 FT E SW COR LOT 51 NW TO PT 42.6 FT E NW COR LOT 53 W 14.45 FT SELY TO PT 15.56 FT W OF BEG E TO BEG PENNS	139.95
LOTS 25-27 OHIO AVE. BURLEIGH'S 3RD. ADD.	208.79
LOTS 17-19 WABASH ADD.	133.84
LOT 9 BLOCK 12 SCHRADER BROS. 3RD. ADD.	105.11
LOTS 19-21 BUTLER & FISHER'S 2ND. ADD.	253.84
ODD LOTS 5 TO 23 INC. HYDRAULIC AVE. BEALL & BERRY'S SUB.	700.20

S1/2 LOT 165 - ALL LOT 167 TILFORD NOW ASH ST. ELEVENTH ST. ADD.	324.83
LOTS 51-53 BLOCK 7 OHIO ADD.	569.27
EVEN LOTS 2 THRU 12 ON MINNESOTA AVE & ODD LOTS 1 THRU 23 ON PIATT AVE EXC N 10 FT FOR ST. PARKVIEW ADD.	188.87
N 20 FT LOT 9-ALL LOT 11 ALICE NOW GREEN ST. MOSSMAN'S 2ND. ADD.	244.39
LOT 2 & 8 FT STRIP ADJ ON N MARSH'S REPLAT	141.36
LOTS 10-12 ESTELLE AVE. ROSE HILL ADD.	645.48
LOT 5 BLOCK W UNIVERSITY PARK ADD.	104.94
LOT 5 & W 35 FT LOT 6 BARTLETT PLAZA ADD.	130.97
LOT 11 BLOCK A MC ADAM ACRES ADD.	819.72
LOT 6 TETRICK ADD.	113.83
LOT 15 BLOCK 4 EASTMOOR ADD.	224.95
ODD LOTS 39 THRU 47 INC. BLOCK 8 COLLEGE CREST ADD.	160.20
LOT 3 SYCAMORE AVE. MC KEE'S RESURVEY	270.12
LOTS 52-54 FERN AVE LAWRENCE'S 7TH ADD.	390.74

LOTS 305-307 PHILLIPS NOW RICHMOND AVE. MARTINSON'S 5TH. ADD.	117.22
LOTS 101-103 DAYTON AVE GLENDALE ADD.	76.43
LOT 9 BLOCK 2 PAWNEE MESA 2ND. ADDITION	135.01
LOTS 13-14-15 BLOCK 21 DIAMOND'S ADD.	202.14
LOTS 20-22-24 BLOCK 9 COLLEGE CREST ADD.	521.44

SECTION 2. The sum so assessed and apportioned against the lots herein before set out and not paid within 30 days from date of notice sent out by the Debt Management Office of the Department of Finance as provided by law, shall be collected by special assessment upon the property liable therefore in one installment and placed upon the tax roll for the year **2011** and shall be certified to the County Clerk and shall be levied and collected in the same manner as other taxes, and the Debt Management Office of the Department of Finance is hereby directed to give written notice to property owner(s) owning property assessed herein, as required by law.

SECTION 3. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **15th day of February, 2011.**

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

Approved as to form

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

\_\_\_\_ Published in the Wichita Eagle on **February 18, 2011**

ORDINANCE NO. **48-942**

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR  
THE REMOVAL OF CERTAIN STRUCTURES, BEING DANGEROUS AND UNSAFE BUILDINGS  
WHICH HAVE BEEN DECLARED A NUISANCE (**BUILDING CONDEMNATION-  
DEMOLITION**) UNDER THE PROVISION OF SECTIONS 18.16.010 TO 18.16.090 OF THE CODE  
OF THE CITY OF WICHITA, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF  
WICHITA, KANSAS:

SECTION 1. That the sum set opposite the following lots, herein specified, be and the same is hereby levied to  
pay the cost of removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance  
under the provisions of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas, located and situated  
upon the following described property:

Legal of Parcel in Benefit District	Assessment
LOTS 1197-1199 EXC E 54.65 FT WICHITA ST. LEWELLEN'S 2ND. ADD.	5,726.78
LOTS 98-100 & LOT 102 EXC N 10 FT PARMENTER'S ADD.	3,851.50
LOTS 10-12 TOPEKA AVE. FORD'S ADD.	3,964.50
S 50 FT OF LOT 2 BLOCK 8 KINKAID'S 2ND. ADD.	367.50
W 86.4 FT E 216.4 FT N 50 FT LOT 5 TARLTON'S 2ND. ADD. EXEMPT 5995-86-TX	6,554.50
LOTS 21-23 BLOCK 2 OHIO ADD.	722.77
LOTS 68-70 CAMPBELL NOW MADISON AVE. STOUT'S ADD.	5,934.94
LOTS 17-19 BLOCK 3 ESTERBROOK PARK ADD.	2,642.50
LOTS 16-18-20 ESTELLE AVE REPLAT OF PART OF GETTOS 2ND ADD.	7,185.88
LOT 17 BLOCK 3 KEN-MAR ADD.	4,649.78
LOT 2 BLOCK 8 KEN-MAR ADD.	4,611.50
LOT 33 BLOCK B PLANEVIEW SUB. NO. 2	10,108.00
LOTS 9-11 BLOCK 6 COLLEGE CREST ADD.	5,885.84
LOTS 26-28 LORRAINE AVE. FAIRMOUNT PARK ADD.	4,361.00

LOT 3 BLOCK 3 SOUTH HYDRAULIC GARDENS ADD.

5,181.77

SECTION 2. The sum so assessed and apportioned against the lots herein before set out and not paid within 30 days from date of notice sent out by the Debt Management Office of the Department of Finance as provided by law, shall be collected by special assessment upon the property liable therefore in one installment and placed upon the tax roll for the year **2011** and shall be certified to the County Clerk and shall be levied and collected in the same manner as other taxes, and the Debt Management Office of the Department of Finance is hereby directed to give written notice to property owner(s) owning property assessed herein, as required by law.

SECTION 3. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **15th day of February, 2011.**

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

Approved as to form

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council Members

**SUBJECT:** Nuisance Abatement Assessments (Districts I, II, III, IV & VI)

**INITIATED BY:** Office of Central Inspection

**AGENDA:** Consent

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**Recommendation:** Approve the assessments.

**Background:** The Office of Central Inspection supports neighborhood maintenance and improvement through abatement of nuisances under Titles 7 and 8 of the City Code. State law and local ordinance allow the City to clean up private properties that are in violation of environmental standards after proper notification to the responsible party. A private contractor performs the work, and the Office of Central Inspection bills the cost to the property owner.

**Analysis:** State law and City ordinance allow placement of the lot cleanup costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the nuisance abatements in question, and the Office of Central Inspection is requesting permission for the Department of Finance to process the necessary special assessments.

**Financial Considerations:** Nuisance abatement contractors are paid through budgeted appropriations from the City's General Fund. Owners of abated property are billed for the contractual costs of the abatement, plus an additional administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property. Nuisance abatements to be placed on special assessments are on the attached property list.

**Goal Impact:** Nuisance abatement activities support the goal of Core Area and Vibrant Neighborhoods by cleaning properties that are detrimental to Wichita neighborhoods.

**Legal Considerations:** These assessments are in accordance with Chapters 7.40.050 and 7.40.060 and 8.01.065 of the City Code. This agenda report has been reviewed and approved by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve the proposed assessments.

**Attachments:** Property List for Special Assessment



<b>Tax Key #</b>	<b>Control #</b>	<b>Address / Location</b>	<b>Amount</b>	<b>District No.</b>
B-11590	131924	1503 E Fortuna	\$522.85	3
C-22257	167785	3239 S Clifton	\$608.00	3
C-22784	168307	2638 E Cheyenne Blvd	\$455.25	3
C-26055-0001	171435	3018 E Conamore	\$746.88	3
B-10941	131180	1408 E Crowley	\$615.50	3
C-23707	169242	2277 S Glendale	\$529.77	3
C-14718	160629	945 N Parkwood Ln	\$553.85	1
B-03315-000A	122125	1217 N Hydraulic	\$371.40	1
C-55287	484676	6048 S Hydraulic	\$1,082.80	3
C-05150	141435	1524/1526 S Hydraulic - duplex	\$1,037.80	1
D-24876	225679	4421 S Osage	\$398.10	4
C-20912	166327	2709 E 24th St N	\$473.80	1
C-24403	169864	2632 N Madison	\$519.50	1
D-00240	198267	608 W Burton St	\$412.45	4
C-15344	160894	1034/1036 N Estelle - duplex	\$308.25	1
C-14521	160487	822/824 S Terrace - duplex	\$466.16	3
C-01932	137719	229 N Chautauqua	\$766.45	1
D-01462	200410	241 N Fern	\$342.66	4
C-01367-0001	136739	1451 N Minnesota	\$365.70	1
A-01472	100762	1319 N Wellington Pl	\$650.25	6
B-03614	122479	1014 N Indiana Ave - V/L	\$675.60	1
A-02588	102027	2034 N Waco - V/L	\$785.15	6
C-11170-001A	156404	1040 S Vassar - V/L	\$1,284.00	3
C-35515	180357	2201 E Mona Ln	\$529.00	3
C-03027-001A	139029	1106 N Chautauqua	\$963.35	1
C-03476	139564	1429 N Poplar	\$589.00	1
D-20458	221942	2409 W May	\$634.62	4

C-10440-001A	155277	3902 E Morris	\$746.75	3
A-08989	109909	504 W Pawnee	\$504.90	3
C-02728	138691	1351 N Poplar	\$468.20	1
D-02775-005A	201948	1737 S St Clair	\$708.50	4
C-11917	157537	2123 E 9th St N	\$535.00	1
D-02551	201607	2237 W Maple St	\$694.00	4
D-00874	199727	815 S Vine	\$693.25	4
C-01525	137259	2001 E 21 <sup>st</sup> St N – Includes Property addressed as 2138 N Minnesota	\$751.65	1
A-05002-00UP	104972	RR behind 1628 N Broadway	\$888.30	6
C-00178	134783	404 N Minnesota – V/L	\$832.75	1
B-03405	122238	1103 N Hydraulic	\$642.00	1
C-26450	171879	2315 S Dellrose	\$622.50	3
B-10232	130471	2002 S Greenwood	\$545.00	3
D-04924	204799	1914 S Glenn	\$445.00	4
C-55374	484765	6364 S Madison	\$1,464.30	3
C-03254	139308	1745 N Chautauqua - V/L	\$575.60	1
C-11177-090Y	156748	3410 E Clark	\$407.40	3
C-01432-0001	136958	1827 N Grove	\$560.97	1
C-01310-0001	136635	1602 N Kansas	\$467.15	1
C-07039-000C	151568	2229/2231 S Kansas - Duplex	\$744.19	3
D-01098	199994	421 S Richmond	\$611.90	4
D-03263-0001	202625	1124 S Sedgwick	\$766.64	4
C-16532	162249	2139 E Shadybrook Ln	\$700.60	1
C-16531	162248	2145 E Shadybrook Ln - V/L E	\$519.00	1
B-07293	126869	747 S Greenwood	\$716.75	1
C-08259-0001	152886	946 N Holyoke	\$645.00	3
C-02687-0001	138607	V/L W oF 2631 E 9TH	\$876.00	1
C-00856	135947	1120 N Hydraulic - Aka 1124 N Hydraulic	\$704.92	1
B-15087	534605	1315 E Maywood	\$1,603.16	3
B-08476	128237	1909 S Ida	\$354.80	3

C-23643	169180	2049 S Bluff	\$461.40	3
C-20199	165791	1702 N Pershing	\$1,055.10	1
A-01221	100487	1304 N Waco	\$429.40	6
A-01219	100485	320 W 12th St N	\$395.00	6
C-00168	134744	1922 E 2nd St N	\$543.55	1
C-17321	163093	3306 E Grandview	\$821.45	3
C-13315	159006	2633 E Stadium - V/L	\$1,031.70	1
C-02748-000A	138722	1342 N Poplar - V/L	\$581.25	1
B-10490	130729	1409 E Amsden	\$505.00	3
C-23559	169099	4001 E Clark	\$445.00	3
B-09050-0018	129226	415 E Evans	\$2,201.54	3
C-07039-000B	151567	2223/2225 S Kansas - Duplex	\$645.09	3
C-29580	174939	2961/2965 S Rutan - Duplex	\$766.75	3
A-01304	100572	1304 N Fairview Ave	\$574.00	6
C-27156	172591	244 S Lochinvar Dr	\$505.00	2
C-18712	164412	1814 S Roanoke Dr	\$426.59	3
C-01310	136634	1612 N Kansas	\$490.00	1
D-00796	199564	802 S Fern	\$1,477.45	4
C-20199	165791	1702 N Pershing	\$2,755.00	1
B-07629	127241	1230 S Washington - V/L	\$1,035.70	1
B-07630	127242	1234 S Washington - V/L	\$1,035.70	1
C-03562-0001	139656	1708 N Estelle	\$402.00	1
D-05070-0001	205084	2510 W 3rd	\$668.40	6
C-10662-0001	155613	4820 E Central	\$430.00	1
C-05466	141767	140 S Erie	\$536.84	1

B-10251	130490	1502 E 16th Street North	\$492.20	1
C-11357	156998	475 S Bleckley	\$703.15	2
B-00238	118787	139 N Santa Fe	\$753.55	6
C-01135-00AA	136326	V/L North of 1642 N Ash	\$483.20	1
A-12357	112399	2807 N Park Place	\$1,263.50	6
A-07672	108087	1632 S Greenway	\$1,865.46	3

Published in The Wichita Eagle on **February 18, 2011**

ORDINANCE NO. 48-943

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE COST OF ABATING CERTAIN PUBLIC HEALTH NUISANCES (**LOT CLEAN UP**) UNDER THE PROVISION OF SECTION 7.40.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That the sum set opposite each of the following lots, pieces and parcels of land or ground, herein specified, be and the same is hereby levied to pay the cost of abating certain public nuisances under the provision of Section 7.40.050 of the Code of the City of Wichita, Kansas, which public health nuisances are determined to have existed upon the following described property:

Legal of Parcel in Benefit District	Assessment
LOT 1 EXC BEG NW COR E 36.63 FT S 102 FT TO S LI W 36.42 FT N 102 FT TO BEG BLOCK 21 RAINBOW FIRST ADD	522.85
E 39 1/2 FT LOT 1201 WACO AVE. LEWELLEN ADD.	395.00
LOT 1203 & S 1/2 LOT 1205 WACO AVE. LEWELLEN ADD.	429.40
N 16 2/3 FT LOT 1203 & S 16 2/3 FT LOT 1205 WICHITA ST. LEWELLEN'S 2ND. ADD.	574.00
LOTS 1216-1218 WATER ST. BUSH'S ADD.	650.25
LOT 20 & N 16 FT LOT 22 BLOCK 2 AVONDALE ADD.	785.15
MO-PAC ROW IN NE 1/4 SEC 20-27-1E	888.30
RES A EXC BLVD & EXC THAT PART TAKEN BY COND. CASE NO. A-52722 EUREKA OR ROCK ISLAND ADD.	1,865.46
LOT 22 HALL'S ADD.	504.90
LOTS 47-49-51 BLOCK G MONTROSE PARK ADD.	1,263.50

LOTS 32-34 5TH NOW SANTA FE AVE. J. R. MEAD'S ADD.	753.55
E1/2 LOTS 329-330 GRANVILLE PARK ADD.	371.40
LOTS 47-49 EXC BEG 69 FT ELY SW COR LOT 47 NWLY TO PT 55.8 FT E NW COR LOT 49 WLY 15.56 FT SELY TO PT 16.67 FT W OF BEG E TO BEG FOR CC-15010 PENNSYLVIA	642.00
LOT 6 & N 15 FT LOT 8 VREELANDS ADD.	675.60
LOTS 33-34 KING'S ADD.	716.75
LOTS 34-36 EXC W 7.74 FT FOR HWY WASHINGTON AVE. LINCOLN ST. ADD.	1,035.70
LOTS 38-40 EXC 7.7 FT M-L FOR HWY WASHINGTON AVE. LINCOLN ST. ADD.	1,035.70
LOTS 153-155 & VAC 10 FT OF ALLEY ADJ IDA AVE RANSON & KAY'S 3RD ADD	354.80
BEG 872.5 FT N & 420 FT E SW COR GOV LOT 4 S 187.5 FT E 75 FT N 187.5 FT W TO BEG SEC 4-28-1E	2,201.54
LOT 22 & W1/2 ALLEY ADJ ON E BODINES ADD.	545.00
LOT 13 FOX-HUEY ADD.	492.20
E 27 FT LOT 5 & W 42 FT LOT 6 BLOCK 3 SCHRADER BROS. 2ND. ADD.	505.00
LOT 3 BLOCK 6 GARDEN PARK ADD.	615.50
W 40 FT E 90 FT S 8 FT LOT 87 & W 40 FT E 90 FT LOTS 89-91 BUTLER & FISHER'S 2ND. ADD.	543.55
LOTS 40-42 BUTLER & FISHER'S 2ND. ADD.	832.75

ODD LOTS 5 TO 23 INC. HYDRAULIC AVE. BEALL & BERRY'S SUB.	704.92
LOTS 56-58 ASH ST. LOGAN ADD.	483.20
LOTS 84-86 BLOCK 6 KANSAS ADD.	490.00

SECTION 2. That the sum set opposite each of the following lots, pieces and parcels of land or ground, herein specified, be and the same is hereby levied to pay the cost of abating certain public nuisances under the provision of Section 7.40.050 of the Code of the City of Wichita, Kansas, which public health nuisances are determined to have existed upon the following described property:

LOTS 88-90-92-94 BLOCK 6 KANSAS ADD.	467.15
LOTS 51-53 BLOCK 7 OHIO ADD.	365.70
LOTS 72-74 TYLER NOW GROVE STOUT'S ADD.	560.97
EVEN LOTS 2 THRU 12 ON MINNESOTA AVE & ODD LOTS 1 THRU 23 ON PIATT AVE EXC N 10 FT FOR ST. PARKVIEW ADD.	751.65
LOTS 9-11 CHAUTAUQUA AVE. FIREBAUGH'S SUB. BLK. 2 CHAUTAUQUA ADD.	766.45
W 12 FT LOT 4 ALL LOT 5 BEARD'S SUB LOT 3 MOSSMAN'S ADD	876.00
LOTS 7-9 MONA NOW POPLAR ST. FAIRMOUNT PARK ADD.	468.20
LOTS 14-16 MONA NOW POPLAR ST. FAIRMOUNT PARK ADD	581.25
S1/2 LOT 106-ALL LOT 108 CHAUTAUQUA AVE FAIRMOUNT PARK ADD.	963.35
LOTS 83-85 CHAUTAUQUA AVE. WOODRIDGE PLACE ADD.	575.60

LOT 2 & 8 FT STRIP ADJ ON N MARSH'S REPLAT	589.00
N 38 1/2 FT LOT 38 & S 13 1/2 FT LOT 40 GOETHE NOW ESTELLE GETTO'S 3RD. ADD.	402.00
LOTS 72-74 WALTER MORRIS ADD.	1,037.80
LOTS 38-40 SPANGENBERGER'S SUB.	536.84
S 1/2 LOT 17 - ALL LOTS 19-21 CLEGG NOW KANSAS AVE. STAFFORD & STANCER'S ADD.	645.09
LOTS 23-25 & N 1/2 LOT 27 CLEGG NOW KANSAS STAFFORD & STANCERS ADD.	744.19
LOTS 11-12 HYDE & ELLIS ADD.	645.00
LOT 14 & W 25 FT LOT 16 BLOCK L LONGVIEW TERRACE ADD.	746.75
LOTS 30-31-32-33 BLOCK 14 EAST HIGHLANDS ADD.	430.00
BEG 131.6 FT N & 196 FT W SE COR NW1/4 SW 1/4 N 131.6 FT W 135 FT S 131.6 FT E 135 FT TO BEG EXC S 50.6 FT THEREOF SEC 26-27-1E	1,284.00
BEG 330 FT S & 868 FT E NW COR SW1/4 S TO S LN 1/2 NW 1/4 SW1/4 E 66 FT N TO PT E OF BEG W TO BEG EXC N 16 FT & EXC E 8 FT N 210.49 FT & EXC S 30 FT	407.40
LOT 22 BLOCK 5 LINCOLN TERRACE ADD.	703.15
LOT 2 BLOCK 2 PARKMORE ADD.	535.00
E 3 FT LOT 17 ALL LOT 18 BLOCK 5 SHADYBROOK ADD.	1,031.70



LOT 4 BLOCK 2 PURCELL'S 2ND. ADD.	466.16
LOT 13 BLOCK 3 COUNTRY SIDE ADD.	553.85
LOT 7 FAIRMOUNT PARK 2ND. ADD.	308.25
LOT 2 BLOCK 3 BUILDERS 2ND. ADD.	519.00
LOT 3 BLOCK 3 BUILDERS 2ND. ADD.	700.60

SECTION 3. That the sum set opposite each of the following lots, pieces and parcels of land or ground, herein specified, be and the same is hereby levied to pay the cost of abating certain public nuisances under the provision of Section 7.40.050 of the Code of the City of Wichita, Kansas, which public health nuisances are determined to have existed upon the following described property:

LOT 5 & W 35 FT LOT 6 BARTLETT PLAZA ADD.	821.45
LOT 14 BLOCK J GREENDALE ADD.	426.59
LOT 26 BLOCK 2 KEN-MAR ADD.	3,810.10
LOT 2 & W 1.5 FT LOT 3 BLOCK O AUDREY MATLOCK HEIGHTS 1ST. ADD.	473.80
BEG 399 FT S NE COR NW 1/4 NW 1/4 S 132.5 FT W 327.52 FT N 132.5 FT E 327.52 TO BEG SEC 11-28-1E	608.00
LOT 11 REPLAT OF BLOCK 12 PAWNEE RANCH ADD.	455.25
LOT 34 MEADOWLARK 3RD. ADD.	445.00
S 90 FT LOTS 4-5 EXC E 5 FT LOT 4 FOR ST BLOCK C MT. VERNON HEIGHTS ADD.	461.40
LOT 11 BLOCK A MC ADAM ACRES ADD.	529.77

S 3 FT LOT 4-ALL LOT 5 BLOCK 4 RIDGECREST ADD.	519.50
W 1/2 LOT 3 BUTLER'S 2ND. ADD.	746.88
LOT 6 TETRICK ADD.	622.50
LOT 8 BLOCK 13 BONNIE BRAE ADDITION	505.00
LOT 6 BLOCK D PLANEVIEW SUB NO. 2	766.75
LOT 15 BLOCK L MONA KAY MATLOCK ADD.	529.00
LOTS 2-4-6-8-10 BURTON ST MC KEE'S RESURVEY	412.45
LOTS 52-54 FERN AVE LAWRENCE'S 7TH ADD.	1,477.45
LOT 13 VINE ST. LAWRENCE'S 7TH. ADD.	693.25
LOTS 305-307 PHILLIPS NOW RICHMOND AVE. MARTINSON'S 5TH. ADD.	611.90
LOTS 9-10-11 & LOT 12 EXC S 15 FT BLOCK 2 JUNCTION TOWN CO. ADD.	342.66
E 1/2 LOT 45-ALL LOT 47 MAPLE ST MAPLE ST ADD.	694.00
LOTS 30-32 & S 2 FT LOT 28 BLOCK G SOUTH UNIVERSITY PLACE ADD.	708.50
LOTS 28-30 SEDGWICK AVE GARFIELD ADD.	766.64
LOTS 10-12 BLOCK 16 WHITLOCK'S REPLAT	445.00
E 50 FT S1/2 LOT 42 & E 50 FT LOTS 44-46-48-50 BLOCK 15 J O DAVIDSON'S 2ND. ADD.	668.40
LOT 7 MAY ST. REPLAT OF LOT 19 BLOCK 1 PAWNEE PARK	634.62

LOT 11 BLOCK 4 PURCELL'S 10TH. ADD.	398.10
LOT 5 BLOCK 1 SOUTH HYDRAULIC GARDENS ADD.	1,082.80
LOT 1 BLOCK B ORCHARD VIEW ADD.	1,464.30
LOT 7 BLOCK D RIVENDALE ADD.	1,603.16

SECTION 4. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **15th day of February, 2011.**

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council

**SUBJECT:** Kellogg, from Cypress to 159th Street East (District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Place the amending ordinance on first reading.

**Background:** The Capital Improvement Program includes funding for East Kellogg improvements. On December 4, 2007, the City Council approved a \$500,000 budget to begin right-of-way acquisition. On March 2, 2010, the City Council approved an additional \$25,000,000 for right-of-way acquisition. An ordinance has been prepared to provide bonding authority for the total budget of \$25,500,000.

**Analysis:** The project is part of an ongoing effort to upgrade East Kellogg to a freeway standard to the Butler County line.

**Financial Considerations:** The approved project budget is \$25,500,000. The funding source is the local sales tax.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by providing a safe and efficient transportation system.

**Legal Considerations:** The amending ordinance has been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council place the amending ordinance on first reading and authorize the necessary signatures.

**Attachment:** Amending ordinance.

Published in the Wichita Eagle on

ORDINANCE NO. 48-944

AN ORDINANCE AMENDING ORDINANCE NO. **47-706** OF THE CITY OF WICHITA, KANSAS DECLARING **KELLOGG, BETWEEN CYPRESS AND 159TH ST. EAST (472-84634)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECES-SITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICEAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

SECTION 1. Section 3 or Ordinance **47-706** is hereby amended to read as follows:

“SECTION 3. The costs of the above described improvements is estimated to be **Twenty-Five Million Five Hundred Thousand Dollars (\$25,500,000)** exclusive of the cost of interest on borrowed money with the total paid by Local Sales Tax funds. Said City share, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation bonds under the authority of K.S.A. 12-689.”

SECTION 2. The original of SECTION 3 of Ordinance No. **47-706** is hereby repealed.

SECTION 3. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official city paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of February, 2011.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

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Gary E. Rebenstorf, Director of Law

City of Wichita  
City Council Meeting  
February 8, 2011

**TO:** Mayor and City Council Members

**SUBJECT:** Correction of Prior Graffiti Ordinance

**INITIATED BY:** Law Department

**AGENDA:** Consent

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**Recommendation:** Adopt the Ordinance which effectively corrects a typo in the December 14, 2010 graffiti ordinance, and repeals the form of ordinance previously published.

**Background:** On December 7, 2010, the City Council considered changes to City Code Sections 5.37.033 and 5.37.035, to add an “intent” element to the provisions addressing possession of graffiti implements. The section of the ordinance repealing prior versions of the amended sections inadvertently referred to Code Section 5.27.035 instead of 5.37.035. In addition, the August 2010 ordinance that originally created the graffiti implement restrictions was inadvertently included with the agenda item as the unmarked ordinance, and it was consequently sent to publication (as Ordinance No. 48-915) instead of the version adding the “intent” element.

**Analysis:** At this point, the best way to effect the changes already approved by the City Council is simply to pass a new ordinance that is substantively identical to the delineated version that was before the City Council on December 7, 2010 and December 14, 2010, except that the repealer clause is modified to refer to the correct Code sections and to repeal Ordinance No. 48-915.

**Financial Considerations:** None.

**Legal Considerations:** The Law Department has prepared the corrective ordinance, and approved it as to form.

**Goal Impact:** Provide a Safe Community and Enhance Quality of Life. The revised ordinance will allow the Police Department to enforce graffiti violations consistent with the limitations intended by City Council.

**Recommendations/Actions:** It is recommended that the City Council approve the ordinance.

**Attachments:** Ordinance Amending Sections 5.37.033 and 5.37.035 of the Code of the City of Wichita, repealing the prior versions thereof and repealing Ordinance No. 48-915 (clean and delineated copies).

(Published in The Wichita Eagle on February 18, 2011)

ORDINANCE NO. 48-945

AN ORDINANCE AMENDING SECTIONS 5.37.033, AND 5.37.035, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO GRAFFITI AND REPEALING THE ORIGINALS OF SECTION 5.37.033 AND 5.37.035 OF THE CODE OF THE CITY OF WICHITA, KANSAS AND ORDINANCE NO. 48-915 OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,  
KANSAS:

SECTION 1. Section 5.37.033 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Possession of Graffiti Implements by Minors Prohibited.** It is unlawful for any person under eighteen (18) years of age to possess, with the intent to place graffiti on the property of another, any graffiti implement while on any public, private or parochial school property, grounds, facilities, buildings, or structures, or within one hundred (100) feet of such properties, or upon the private property of another without the prior written consent of the owner or occupant of such private property. The provisions of this section shall not apply to the possession of felt tip markers by minors attending, or traveling to or from the school at which the minor is enrolled, if the minor is participating in a class at said school which formally requires the possession of felt tip markers."

SECTION 2. Section 5.37.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Possession of Graffiti Implements Prohibited in Public Places.**

It is unlawful for any person to possess, with the intent to place graffiti on the property of another, any graffiti implement while in, upon or within one hundred (100) feet of any public facility, park, playground, swimming pool, skate park, recreational

facility, or other public building owned or operated by the city, county, state, or federal government, or while in, under or within one hundred (100) feet of an underpass, bridge, abutment, storm drain, spillway or similar types of infrastructure unless otherwise authorized.”

SECTION 3. The originals of Sections 5.37.033 and 5.37.035 of the Code of the City of Wichita, Kansas, and Ordinance No. 48-915 of the City of Wichita, Kansas, are hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the Governing Body of the City of Wichita, Kansas this 15<sup>th</sup> day of February, 2011.

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf  
City Attorney



(Published in The Wichita Eagle on \_\_\_\_\_)

DELINEATED

01/25/2011

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS 5.37.033, AND 5.37.035, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO GRAFFITI AND REPEALING THE ORIGINALS OF SECTION 5.37.033 AND 5.37.035 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND ORDINANCE NO. 48-915 OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,  
KANSAS:

SECTION 1. Section 5.37.033 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Possession of Graffiti Implements by Minors Prohibited.** It is unlawful for any person under eighteen (18) years of age to possess, with the intent to place graffiti on the property of another, any graffiti implement while on any public, private or parochial school property, grounds, facilities, buildings, or structures, or within one hundred (100) feet of such properties, or upon the private property of another without the prior written consent of the owner or occupant of such private property. The provisions of this section shall not apply to the possession of felt tip markers by minors attending, or traveling to or from the school at which the minor is enrolled, if the minor is participating in a class at said school which formally requires the possession of felt tip markers."

SECTION 2. Section 5.37.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Possession of Graffiti Implements Prohibited in Public Places.**

It is unlawful for any person to possess, with the intent to place graffiti on the property of another, any graffiti implement while in, upon or within one hundred (100) feet of any public facility, park, playground, swimming pool, skate park, recreational facility, or other public building owned or operated by the city, county, state, or federal government, or while in, under or within one hundred (100) feet of an underpass, bridge, abutment, storm drain, spillway or similar types of infrastructure unless otherwise authorized.”

SECTION 3. The originals of Sections 5.37.033 and ~~5.27.035~~ 5.37.035 of the Code of the City of Wichita, Kansas, and Ordinance No. 48-915 of the City of Wichita, Kansas, are hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the Governing Body of the City of Wichita, Kansas this \_\_\_\_ day of February, 2011.

CITY OF WICHITA, KANSAS

By \_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf  
City Attorney

City of Wichita  
City Council Meeting  
February 8, 2011

**To:** Mayor and City Council

**Subject:** NRPA Return and Restore Grant (District VI)

**Initiated By:** Department of Park and Recreation

**Agenda:** Consent

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**Recommendation:** Approve the grant application, accept the grant funds and authorize all necessary signatures.

**Background:** The National Recreation and Park Association (NRPA) issued the Return and Restore grant to support projects that create and expand adaptive recreation programs for veterans and injured service members. The grant states that funding may be used for purchasing equipment, training and education of staff leaders, program enhancement, Americans with Disabilities (ADA) compliance, and to subsidize program fees. No matching funds are required for this grant.

The grant application was due on January 4, 2011. Approval for submission of the Return and Restore grant for \$5,025.45 was received from the City Manager on January 3, 2011. Grant funds of \$5,000 were awarded on January 24, 2011.

**Analysis:** The awarded grant funds will purchase additional exercise equipment to be placed at the Orchard Recreation Center Exercise Room to expand opportunities to the mobility impaired. Funding will also provide specialist certification training to the personal trainer at the facility, allowing her to work directly with injured veterans and service members and increasing partnership opportunities with the Veterans Administration and other veteran organizations. A tennis tournament for active service members and veterans is being planned at the Ralph Wulz Tennis Center for 2011 with singles and doubles brackets for non-adaptive, adaptive, and open play.

**Financial Consideration:** There is no impact to the financial budget since there are no matching funds required.

**Goal Impact:** The opportunities provided by the grant will enhance the Quality of Life to citizens in the community and increase community involvement in healthy recreation.

**Legal Consideration:** None.

**Recommendation/Actions:** It is recommended that City Council approve the grant application process, accept the grant funds of \$5,000 and authorize all necessary signatures.

**Attachment:** NRPA grant award



January 28, 2010

Mr. Doug Kupper  
City of Wichita Park and Recreation  
455 North Main, 11th Floor  
Wichita, Kansas 67202

Dear Mr. Kupper,

The National Recreation and Park Association (NRPA) considered over 78 applicants from park and recreation agencies around the country for the grant opportunity Parks: Return & Restore. We are pleased to inform you that City of Wichita Park and Recreation has been selected to receive a grant in the amount of \$5,000. Congratulations!

This grant opportunity is an outgrowth of a partnership between NRPA and the United States Olympic Committee, Paralympic Division to provide resources at the local level that will increase physical activity opportunities for injured service members and veterans.

Over the year as a grantee, City of Wichita Park and Recreation is expected to:

- Submit four progress reports (April 15, 2011, June 15, 2011, October 15, 2011 and January 15, 2012) that include the following information (a template will be provided by NRPA):
  - Program details – Specifics on progress and accomplishments of the program.
  - Evaluation – The impact the program and funds have, including how wounded service members and veterans are being served.
  - Partners – The inclusion and involvement of partners in the program.
  - Sustainability – Plans for continuing activities.
  - Funding – Updates on how the grant funds are being spent including a budget.
  - Participation – Submit a roster of all participants in grant related activities. To the best of your ability obtain the following: name, current or last rank, address, email address, phone number, age, and description of type of disability.
- Assist in developing content for *Parks & Recreation* magazine, NRPA Express (e-newsletter), and other NRPA and USOC communication channels as requested.

During the next year we will also work towards the goals outlined in your grant application:

- n The Advanced Health and Fitness Specialist Certification Training will be complete by October 2011. An advanced health and fitness specialist will



- provide in-depth preventative and post rehabilitative fitness programming for individuals who are at risk for or are recovering from a variety of cardiovascular, pulmonary, metabolic and musculoskeletal issues.
- n An additional seven injured service members or veterans will be served monthly at the exercise center. By 2012, 10-15 injured service members or veterans will be served monthly at the exercise center. This equates to an annual class participation of 120 – 180 injured service members or veterans and individual participation with the personal trainer will be encouraged.
  - n Specialty equipment will be purchased and installed at Orchard Recreation Center Exercise Room.
  - n Recreational exercise at the swimming pool will target between 8 and 20 participants each evening during the summer session with exercise opportunities being held at least one evening per week.
  - n A Veteran's Tennis Tournament is being planned at the Ralph Wulz Tennis Center and will serve 50 active service members or Veterans.

Please acknowledge your agreement to the terms above by signing below. Upon receipt of this signed form, a check will be issued for your grant funds.

City of Wichita, Department of Park and Recreation  
Name of Agency

\_\_\_\_\_  
Douglas R. Kupper, CPRP  
Director of Park and Recreation

\_\_\_\_\_  
Gary Rebenstorf  
Director of Law

\_\_\_\_\_  
Carl Brewer  
Mayor, City of Wichita

Attest:

\_\_\_\_\_  
Karen Sublett, City Clerk, City of Wichita



Please assign a contact person within your agency:

City of Wichita 48-6000653  
Name of Agency and EIN Number

Karen Walker, CPRP

NRPA will send you the program report template and guidelines via e-mail within the next 45 days. NRPA is looking forward to working with all agencies on this project and watching your program grow and succeed in serving our injured service members and veterans.

Please do not hesitate to contact me should you have any questions at (703) 858-2156 or via email [sobrien@nrpa.org](mailto:sobrien@nrpa.org).

Sincerely,

Shelley R. O'Brien  
Senior Manager  
National Recreation and Park Association

This U.S. Paralympics grant administered by the National Recreation and Park Association is sponsored by the United States Department of Veterans Affairs. The content of this promotional material does not necessarily reflect the position or policy of the Government, and no official endorsement should be inferred.